

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

**REGULAR MEETING**  
June 1, 2009  
7:00 PM

**CALL TO ORDER BY MAYOR ROGERS**  
**PLEDGE OF ALLEGIANCE**  
**MOMENT OF REFLECTION**

**1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK**

**2 UNSCHEDULED PUBLIC APPEARANCES**

(Limit three minutes per person. Please state your name.)

**3 CONSENT AGENDA**

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

**a. APPROVAL OF MINUTES**

1. Minutes of the Work Session of May 18, 2009
2. Minutes of the Regular Meeting of May 18, 2009

**b. LIQUOR LICENSE ACQUISITION OF CONTROL – PILOT TRAVEL CENTERS**

City Council will consider a request for approval of an application from Mr. H.J. Kewkowitz for Acquisition of Control of a Series 10-Off-Sale Retailer's License to sell beer and wine at Pilot Travel Center located at 900 North 99th Avenue. The Council will take appropriate action.

**c. CONTINUANCE - LIQUOR LICENSE - MY BIG FAT GREEK RESTAURANT**

City Council will consider a request to continue to the June 15 meeting consideration of the application submitted by Mr. Juan Ortiz for a Series 16 (State Series 12) restaurant license to sell all spirituous liquors at My Big Fat Greek Restaurant located at 10040 West McDowell Road in order to allow time for the applicant to resolve outstanding issues. The Council will take appropriate action.

**d. APPOINTMENT OF JUDGES PRO TEMPORE**

City Council will consider a request to re-appoint the existing pro-tem judges to one-year terms expiring on June 1, 2010. The Council will take appropriate action.

**e. PURCHASE AGREEMENT WITH FELIX CONSTRUCTION**

City Council will consider a request to approve a purchase agreement with Felix Construction to complete electrical upgrades at the Northside Booster Station and the 10th Street Lift Station to support the installation of new communications towers for an amount not to exceed \$52,462 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**f. PURCHASE OF TWO 2009 FORD CROWN VICTORIA POLICE INTERCEPTORS**

City Council will consider a request to authorize the purchase of two 2009 Ford Crown Victoria Police Interceptors at a cost of \$72,912.96 to replace damaged vehicles and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**g. RESOLUTION 2827-609 - ORDERING THE SALE OF GENERAL OBLIGATION BONDS, SERIES A (2009)**

City Council will consider a resolution ordering the sale of City of Avondale General Obligation Bonds, Series A (2009) in an amount not to exceed \$31,500,000, and authorizing all actions necessary to proceed with the sale. The Council will take appropriate action.

**h. ORDINANCE 1373-609 - MUNICIPAL CODE AMENDMENT RELATING TO THE CREATION AND GOVERNANCE OF ALL APPOINTIVE BOARDS, COMMISSIONS AND COMMITTEES**

City Council will consider an ordinance amending the Avondale City Code Chapters 12 and 17 and creating a new Chapter 27 relating to the creation and governance of all appointive boards, commissions and committees. The Council will take appropriate action.

**i. RESOLUTION 2830-609 - AMENDING LIBRARY BOARD BYLAWS**

City Council will consider a resolution amending the by-laws for the Library Advisory Board. The Council will take appropriate action.

**j. ORDINANCE 1375-609 - GRANTING SHARED WELL SITE USE AND ACCESS EASEMENTS TO SRP IN THE DEL RIO BOOSTER PUMP FACILITY**

City Council will consider an ordinance granting easements to Salt River Valley Water Users Association (SRP) for the purpose of construction, operation and maintenance of and access to the SRP shared well site 28 situated within the Del Rio Ranch Water Booster facility located on the north side of Whyman Avenue west of 117th Avenue and authorize the Mayor or City Manager and City Clerk to execute all the appropriate documents. The Council will take appropriate action.

**4 PUBLIC HEARING AND RESOLUTION 2829-609 - AMENDMENT TO THE 2008-2009 CDBG ANNUAL ACTION PLAN**

City Council will hold a public hearing and consider a resolution amending the 2008-2009 Annual Action Plan to accept an additional \$132,659 in CDBG funds from the U.S. Department of Housing and Urban Development (HUD). The Council will take appropriate action.

**5 CONTINUANCE - PUBLIC HEARING AND ORDINANCE - SECTION 12 LANDSCAPE ORDINANCE**

City Council will consider a request to continue the public hearing and consideration of the ordinance to amend Section 7 of the Avondale Zoning Ordinance, repeal existing Section 12 of the Zoning Ordinance, and approve a new Section 12 of the Zoning Ordinance entitled *Landscape, Walls and Fences* to the meeting of June 15, 2009. The Council will take appropriate action.

**6 EXECUTIVE SESSION**

**a.** The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City's Attorney in order to consider its position and instruct the City Attorney regarding the Council's position regarding a potential Intergovernmental Agreement for solid waste.

**b.** The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(3) for discussion or consultation with the City's Attorney regarding tax issues.

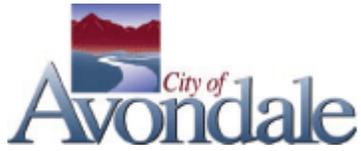
**7 ADJOURNMENT**

Respectfully submitted,

A handwritten signature in cursive script that reads "Carmen Martinez". The signature is written in black ink on a white background.

Carmen Martinez  
City Clerk

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at 623-333-1200 at least 48 hours prior to the council meeting.



# CITY COUNCIL REPORT

**SUBJECT:**  
APPROVAL OF MINUTES

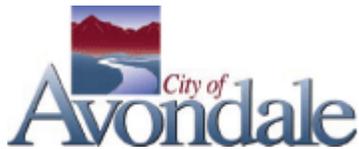
**MEETING DATE:**  
June 1, 2009

**TO:** Mayor and Council  
**FROM:** Carmen Martinez  
**THROUGH:** Charlie McClendon, City Manager

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Liquor License Acquisition of Control – Pilot Travel Centers

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council  
**FROM:** Carmen Martinez, City Clerk (623) 333-1214  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will consider a request for approval of an application from Mr. H.J. Kewkowitz for Acquisition of Control of a Series 10-Off-Sale Retailer's License to sell beer and wine at Pilot Travel Center located at 900 North 99th Avenue.

**DISCUSSION:**

The City Clerk's Department has received an application from Mr. H. J. Lewkowitz for an acquisition of control resulting from modifications to the membership of the limited liability corporation. The required fee of \$450.00 has been paid.

The Arizona Department of Liquor License and Control has accepted the submitted application as complete.

The Development Services, Police and Fire Departments have reviewed the application and are recommending approval. While not required by the ordinance, the application was also reviewed by the Finance Department and has determined that the Center is in good financial standing with the City. Department comments are attached.

The original application was reviewed and approved by the City Council on September 2, 2003.

**RECOMMENDATION:**

City Staff is recommending approval of an application for Acquisition of Control of a Series 10-Off-Sale Retailer's License to sell beer and wine at Pilot Travel Center located at 900 North 99th Avenue submitted by Mr. H.J. Lewkowitz.

**ATTACHMENTS:**

Click to download

- [Application](#)
- [Recommendations](#)
- [Vicinity map](#)
- [Posting pictures](#)

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

09 APR 24 Lic. Dept AM 9 149

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

## APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL - RESTRUCTURE

Check  
Appropriate  
Box

<input type="checkbox"/> Agent Change Complete Sections 1,2,3,4,6 (See Note 1 on back)	<input checked="" type="checkbox"/> Acquisition of Control Complete Sections 1,2, (3,4 if changing Agent), 6	<input type="checkbox"/> Restructure Complete Sections 1,2,(3,4 if changing Agent) ,5,6 (See Note 2 on back)
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### SECTION 1 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

1. Name (INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER)
- 2100/482      LEWKOWITZ      H.      J.      SEE ATTACHED  
Last      First      Middle      Liquor License #
2.  Corporation  L.L.C.  N/A: PILOT TRAVEL CENTERS LLC      Corp. File #: R-0987210-9  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: PILOT TRAVEL CENTERS (SEE ATTACHED)  
(Exactly as it appears on license)
4. Business Address: SEE ATTACHED  
(Do not use P.O. Box Number)      City      COUNTY      Zip
5. Is the business located within the incorporated limits of the above city or town?  Yes  No
6. Mailing Address: 2600 N. CENTRAL AVE., SUITE 1775      PHOENIX      AZ      85004  
City      State      Zip
7. Business Phone: (928) 773-0180      Residence Phone: \_\_\_\_\_
8. Does this transaction involve the sale of any portion of the corporate stock?  YES  NO  N/A If yes, submit a certified copy of minutes.
9. Has there been any change of officers?  YES  NO  N/A If yes, submit a certified copy of minutes.

### SECTION 2 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

Each person listed in Section II must submit a personal questionnaire (Form LIC0101) and a Department approved fingerprint card which may be obtained at the Dept. A person appearing in both lists need only submit one questionnaire and fingerprint card.

1. List individual owner or partners or all directors, officers in corp., members in LLC:

Last	First	Middle	Title	Residence Address	City State Zip
PILOT CORPORATION			MEMBER	5508 LONAS RD., KNOXVILLE, TN 37909	
PROPELLER CORP.			MEMBER	712 FIFTH AVENUE, 43RD FL. NEW YORK, NY 10019	
(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)					

2. List stockholders or controlling members owning 10% or more of Corp/LLC:

Last	First	Middle	% Owned	Residence Address	City State Zip
PILOT CORPORATION			52.5%	5508 LONAS RD., KNOXVILLE, TN 37909	
PROPELLER CORP.			47.5%	712 FIFTH AVENUE, 43RD FL. NEW YORK, NY 10019	
(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)					

LIC0102 09/2005

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)  
Disabled individuals requiring special accommodations please call the Department

Date Received 4/24/09  
CSR \_\_\_\_\_

SECTION 3 (COMPLETE THIS SECTION FOR AGENT CHANGE)

1. If the corporation/L.L.C. is owned by another entity, ATTACH AN OWNERSHIP AND DIRECTOR / OFFICER / MEMBER DISCLOSURE for the parent entity. Attach additional sheets as necessary in order to disclose real people.

As an Agent, will you be physically present and operating the licensed premises? YES NO

If you answered YES, you must provide proof of attendance of a Department approved Liquor Law Training Course within the last five years before your application for Agent can be submitted. If "no" a manager with approved training must be submitted.

SECTION 4 (COMPLETE THIS SECTION FOR AGENT CHANGE)

To be completed by the INDIVIDUAL OR EXISTING AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER:

1. License Number: Date of last renewal:

2. Current Licensee or Agent: (Exactly as it appears on license) Last First Middle

I, hereby consent to the agent appointment named herein and agree to immediately assign a new agent in the event of the death, resignation, or discharge of this agent. I also understand that if the background report shows that I, the corporation, or any officer, director, member, or stockholder have been convicted of a felony in the past five (5) years, I will immediately surrender the license to the Arizona Department of Liquor Licenses and Control and hereby waive all rights to appeal such action.

X The foregoing instrument was acknowledged before me this day of Month Year State of County of

My commission expires on: (Signature of NOTARY PUBLIC)

SECTION 5 (COMPLETE THIS SECTION FOR RESTRUCTURE)

Is there more than one licensed premises involved? YES NO If yes, SEPARATE APPLICATIONS must be filed and fees paid for each license/location.

Type of current ownership:

- J.T.W.R.O.S.
INDIVIDUAL
PARTNERSHIP
CORPORATION
LIMITED LIABILITY CO.
TRUST
OTHER Explain

Type of new ownership:

- J.T.W.R.O.S.
INDIVIDUAL
PARTNERSHIP
CORPORATION
LIMITED LIABILITY CO.
TRUST
OTHER Explain

SECTION 6 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

To be completed by INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER as listed in Question 1 Section 1:

I, H. J. LEWKOWITZ, hereby declare that I am the APPLICANT filing this application.

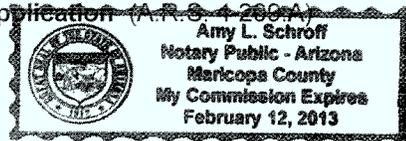
have read the application and the contents and all statements are true, correct and complete.

X The foregoing instrument was acknowledged before me this day of April 2009 State of ARIZONA County of MARICOPA

My commission expires on: Feb 12, 2013 (Signature of NOTARY PUBLIC)

NOTE 1: The fee for an agent change MUST be submitted with this application: \$100.00 for the first application and \$50.00 for each additional application, not to exceed \$1,000.00. (A.R.S. 4-209.H)

NOTE 2: The \$100.00 fee for restructure MUST be submitted with this application (A.R.S. 4-209.A)



Pilot Travel Centers, LLC  
Arizona Liquor Licenses

Business Name	License #	Address	City	State	Zip	Phone	County
PILOT TRAVEL CENTER # 180	10033146	12500 W I - 40	BELLEMONT	AZ	86015	(928)773-0180	COCONINO
PILOT TRAVEL CENTER #211	10083108	14750 S HWY 95	LAKE HAVASU CITY	AZ	86404	(928)764-2410	MARICOPA
PILOT TRAVEL CENTER #279	10123027	769 E FRONTAGE RD	RIO RICO	AZ	85648	(520)377-0001	SANTA CRUZ
PILOT TRAVEL CENTER #458	10113088	619 S SUNSHINE BLVD	ELOY	AZ	85231	(520)466-7550	PINAL
PILOT TRAVEL CENTER #459	10074610	900 N 99TH AVE	AVONDALE	AZ	85323	(928)927-7777	MARICOPA

APR 24 11:49 AM '09

**ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL**

\*09 APR 24 Liq. Dept AM 9 49

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

**QUESTIONNAIRE**

**Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.**

**Read carefully. This instrument is a sworn document. Type or print with BLACK INK. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.**

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT DLLC. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY DLLC. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Effective 10/01/07 there is a \$24.00 processing fee for each fingerprint card submitted.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

**Liquor License #**

See Attached

*(If the location is currently licensed)*

1. Check appropriate box →  Controlling Person (Complete Questions 1-19)  Agent (Complete Questions 1-19)  Manager (Only) (Complete All Questions except # 14, 14a & 21)  
 Controlling Person or Agent must complete #21 for a Manager  
 Controlling Person or Agent must complete # 21

2. Name: LEWKOWITZ H. J. Date of Birth: \_\_\_\_\_  
Last First Middle (NOT a Public Record)

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: ARIZONA  
(NOT a public record) (NOT a public record)

4. Place of Birth: NEW LONDON CT USA Height: 6'4 Weight: 220 Eyes: BROWN Hair: GREY  
City State Country (not county)

5. Marital Status  Single  Married  Divorced  Widowed Daytime Contact Phone: \_\_\_\_\_

6. Name of Current or Most Recent Spouse: LEWKOWITZ ANDREA J. DAHLMAN Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? ARIZONA If Arizona, date of residency: 1929

8. Telephone number to contact you during business hours for any questions regarding this document. (602) 200-7222

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: See Attached Premises Phone: ( ) See Attached

11. Physical Location of Licensed Premises Address: See Attached  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
1/1/04	CURRENT	LAWYER	LEWKOWITZ LAW OFFICE, 3101 N CENTRAL AVE, #200, PHOENIX, AZ 85012
5/95	12/31/03	LAWYER	RYAN WOODROW & RAPP 3101 N CENTRAL AVE #1500, PHOENIX, AZ 85012

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑ ↓

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address <small>If rented, attach additional sheet with name, address and phone number of landlord</small>	City	State	Zip
2/1/99	CURRENT	OWN		PHOENIX	AZ	85016

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?  
If you answered YES, how many hrs/day? \_\_\_\_\_, and answer #14a below. If NO, skip to #15.  YES  NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.  YES  NO
15. Have you been convicted, fined, ordered to deposit bail, imprisoned, placed on probation or parole, had to post bond or had sentence suspended for any violation of ANY law or ordinance within the past ten (10) years (include only traffic violations that were alcohol and/or drug related)?  YES  NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved?  YES  NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state?  YES  NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation?  YES  NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state?  YES  NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved, and dispositions.  
**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

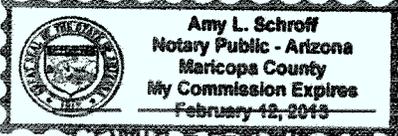
20. I, H. J. LEWKOWITZ, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

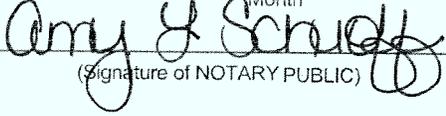
X   
(Signature of Applicant)

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this  
22 day of April, 2009  
Month Year

My commission expires on: 12 Feb 2013  
Day Month Year



  
(Signature of NOTARY PUBLIC)

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license. The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

X \_\_\_\_\_  
Signature of Controlling Person or Agent (circle one)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_  
Day Month Year

109 APR 24 Liq. Dept AM 9 49

Attachment to Questionnaire  
of  
H. J. LEWKOWITZ

Question #19:

I held interest in a Village Inn Pizza Parlor with a beer & wine license in Canoga Park, CA. I sold my interest in 1975.

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

09 APR 24 Lic. Dept AM 9:49  
**QUESTIONNAIRE**

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

**Liquor License #**

Eff. 10/01/07 there is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SEE ATTACHED

(If the location is currently licensed)

1. Check appropriate box →  Owner  Partner  Stockholder  Member  Officer  Agent  Manager(Only)  
 Other *See attached* Complete Questions 1-20 & 24) (Complete All Questions except # 14, 14a & 25)  
 Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: VUURSTEEN GIJSBERT CORNELIS Date of Birth: \_\_\_\_\_  
 Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: CT  
 (This Will Not Become a Part of Public Records)

4. Place of Birth: GELDROP NETHERLANDS Height: 6'3 Weight: 190 Eyes: BROWN Hair: BROWN  
 City State Country (not county)

5. Marital Status  Single  Married  Divorced  Widowed Residence (Home) Phone: \_\_\_\_\_

6. Name of Current or Most Recent Spouse: SCHIPPER MARTINE PETRA Date of Birth: \_\_\_\_\_  
 (List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? CT If Arizona, date of residency: \_\_\_\_\_

8. Telephone number to contact you during business hours for any questions regarding this document. (212) 265 - 6229

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: SEE ATTACHED Premises Phone: (\_\_\_\_\_) \_\_\_\_\_ - SEE ATTACHED

11. Licensed Premises Address: GN  
 Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
9/2007	CURRENT	MANAGING DIRECTOR	CVC CAPITAL PARTNERS, 712 FIFTH AVE, 43RD NY, NY 10019
6/2006	8/2007	DIRECTOR	CVC CAPITAL PARTNERS BENELUX NV, CHAUSSEE DE LA HULPE 166, BRUSSELS, BELGIUM 1170
9/2003	5/2006	DIRECTOR	CVC CAPITAL PARTNERS, WTC SCHIPHOL TOWER B, SCHIPHOL BLVD 285, LUCHTHAVEN SCHIPHOL, NETHERLANDS

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑ ↓

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
9/2007	CURRENT	OWN		OLD GREENWICH	CT	06670
6/2006	8/2007	OWN	50 GROESELLENBERGSTR	BRUSSELS	BELGIUM	1180
2/2005	6/2006	OWN	34 AGAMEMNONSTR	AMSTERDAM	Netherlands	1076 LW
6/2000	2/2005	OWN	13 KORTE PRINSENGRACHT	AMSTERDAM	Netherlands	1013 GN

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? \_\_\_\_\_, answer #14a below. If NO, skip to #15.  YES  NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you **EVER** been detained, cited, arrested, indicted or summoned into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
16. Have you **EVER** been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO
17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved?  YES  NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state?  YES  NO
19. Has anyone **EVER** filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license?  YES  NO
20. Are you **NOW** or have you **EVER** held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state?  YES  NO

**If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.**

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

**Manager Section**

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to #21 is "NO" course must be completed **BEFORE ISSUANCE** of a new license **OR APPROVAL** on an existing license.
22. Do you make payments to the licensee?  YES  NO If "yes", how much? \$\_\_\_\_\_ per month. Total debt to licensee \$\_\_\_\_\_
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business?  YES  NO If "yes", attach a copy of such agreement

24. I, Gijsbert Cornelis Vuursteen, hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X [Signature]  
(Signature of Applicant)

State of New York County of N.Y.  
The foregoing instrument was acknowledged before me this 15 day of December, 2008  
Day Month Year

My commission expires on: 18 2 2011  
Day Month Year

[Signature]  
(Signature of NOTARY PUBLIC)

**FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION**  
**Licensee or Agent Approval of Manager**

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Hereby authorize the applicant to act as manager for the named liquor license.

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Year

X \_\_\_\_\_  
(Signature of LICENSEE/AGENT)

Day Month Year

My commission expires on: \_\_\_\_\_  
Day Month Year

(Signature of NOTARY PUBLIC)

**MARIA ANN DICARLOCCI**  
Notary Public, State of New York  
No. 01D16087294  
Qualified in Bronx County  
Commission Expires 2/18/2011

Question #1:

109 APR 24 11:49 AM '19

I am an officer of the member which is Propeller Corporation which owns 47.5% of Pilot Travel Centers LLC

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

400 W Congress #521  
Tucson AZ 85701-1352  
(520) 628-6595

APR 24 Lic. Dept. AM 9:50  
APR 24 Lic. Dept. AM 9:50  
**QUESTIONNAIRE**

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

**Liquor License #**

Eff. 10/01/07 there is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SEE ATTACHED

(If the location is currently licensed)

1. Check appropriate box →	<input type="checkbox"/> Owner	<input type="checkbox"/> Partner	<input type="checkbox"/> Stockholder	<input type="checkbox"/> Member	<input type="checkbox"/> Officer	<input type="checkbox"/> Agent	<input type="checkbox"/> Manager(Only)	
	<input type="checkbox"/> Other (Complete Questions 1-20 & 24)						<input type="checkbox"/> Licensee or Agent must complete # 25 for a Manager	
							<input type="checkbox"/> Licensee or Agent must complete # 25	

2. Name: WITTEMANN GERO JAKOB Date of Birth: \_\_\_\_\_  
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: \_\_\_\_\_ Drivers License #: N/A State: N/A  
(This Will Not Become a Part of Public Records)

4. Place of Birth: SAARBRUCKEN GERMANY Height: 6'2 Weight: 175 Eyes: BLUE Hair: BLONDE  
City State Country (not county)

5. Marital Status  Single  Married  Divorced  Widowed Residence (Home) Phone: (\_\_\_\_\_) \_\_\_\_\_

6. Name of Current or Most Recent Spouse: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? NEW YORK If Arizona, date of residency: \_\_\_\_\_

8. Telephone number to contact you during business hours for any questions regarding this document. (212) 265 - 6415

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: SEE ATTACHED Premises Phone: (\_\_\_\_\_) \_\_\_\_\_ SEE ATTACHED

11. Licensed Premises Address: SEE ATTACHED  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
9/2007	CURRENT	INVESTMENT DIRECTOR	CVC, 712 FIFTH AVE, 43RD NY, NY 10019
6/2004	10/2007	INVESTMENT EXECUTIVE	CVC GMBH, WESTEND DUO, BOCKENHEIMER LANDSTRASSE 24, FRANKFURT GERMANY 60323
2/2004	6/2004	Student	Braugasse 3, Vallendar, Germany 56179

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
10/2007	CURRENT	RENT		NEW YORK	NY	10005
6/2004	10/2007	RENT	PALMENGARTENSTRASSE 3	FRANKFURT	GERMANY	60325
12/2003	6/2004	RENT	BRAUGASSE 3	VALLENDAR	GERMANY	56179

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? \_\_\_\_\_, answer #14a below. If NO, skip to #15.  YES  NO  
14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO

16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related.  YES  NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved?  YES  NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state?  YES  NO

19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license?  YES  NO

20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state?  YES  NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof)  YES  NO  
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.  
22. Do you make payments to the licensee?  YES  NO If "yes", how much? \$ \_\_\_\_\_ per month. Total debt to licensee \$ \_\_\_\_\_  
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business?  YES  NO If "yes", attach a copy of such agreement

24. I, GERO TAKOB WITTEMANN hereby declare that I am the APPLICANT filing this questionnaire.  
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X [Signature] State of New York County of N.Y.  
(Signature of Applicant) The foregoing instrument was acknowledged before me this

15 day of December, 2008  
Day Month Year

My commission expires on: 18 2 2011 [Signature]  
Day Month Year (Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): \_\_\_\_\_  
Hereby authorize the applicant to act as manager for the named liquor license.  
State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this  
X \_\_\_\_\_ day of \_\_\_\_\_  
(Signature of LICENSEE/AGENT) Day Month Year

My commission expires on: \_\_\_\_\_ (Signature of NOTARY PUBLIC)  
Day Month Year

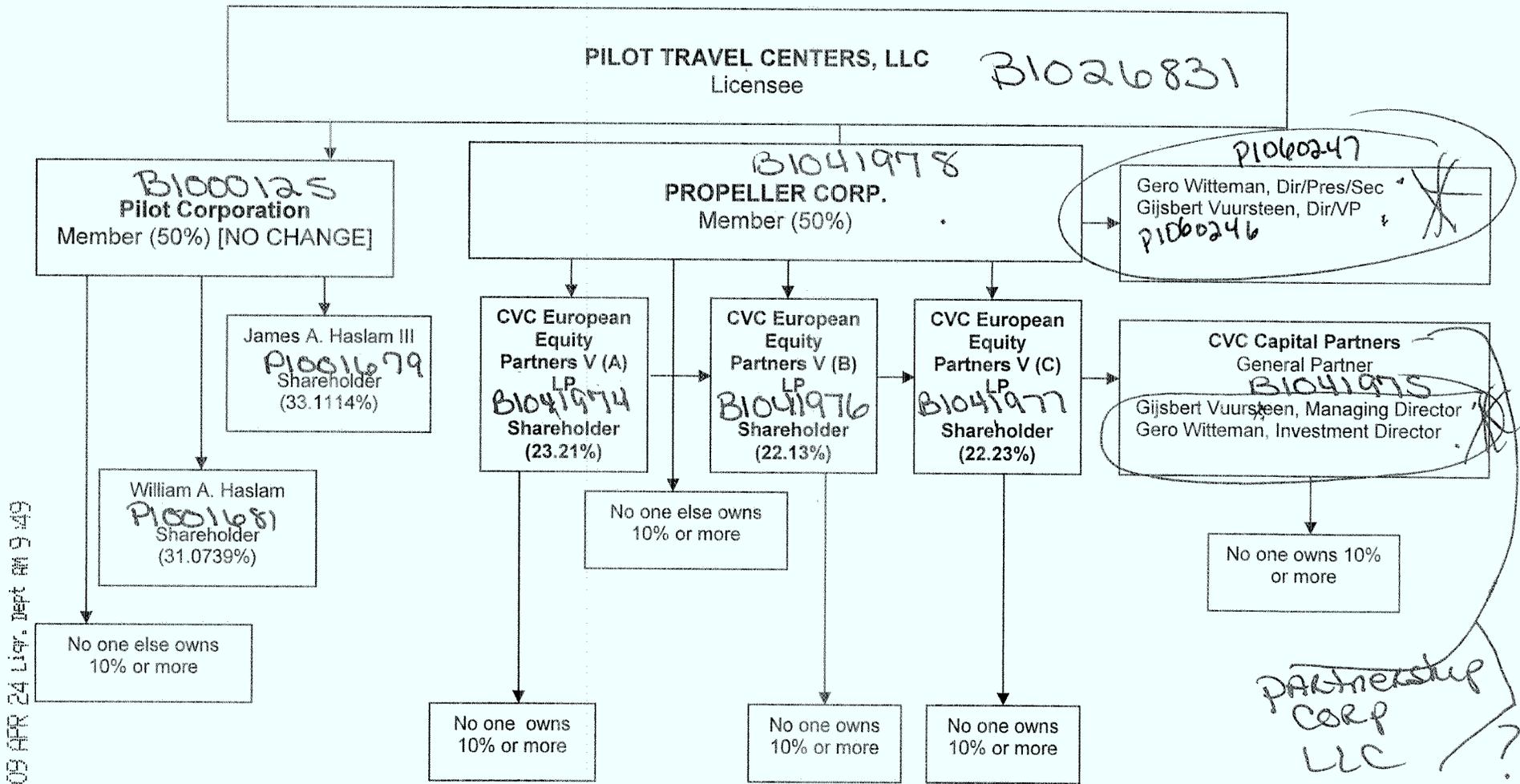
MARIA ANN DICARLUCCI  
Notary Public, State of New York  
No. 01D16087294  
Qualified in Bronx County  
Commission Expires 2/18/2011

Question #1:

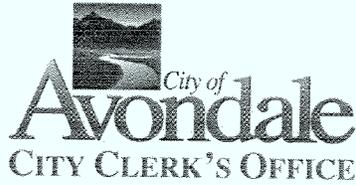
\*09 APR 24 Lig. Dept AM 9 50

I am an officer of the member which is Propeller Corporation which owns 47.5% of Pilot Travel Centers LLC

\* NEED to Add officers



mail address 2600 N Central Ave STE 1775  
Phx 85004



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

ACQUISITION OF CONTROL

**ROUTING:**

- FINANCE
- POLICE DEPARTMENT
- FIRE DEPARTMENT
- DEVELOPMENT SERVICES

---

**APPLICANT'S NAME:** H. J. LEWKOWITZ

**BUSINESS NAME:** PILOT TRAVEL CENTERS

**ADDRESS:** 900 NORTH 99<sup>TH</sup> AVENUE

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

**PURPOSE OF EXTENSION:** CHANGE OF MEMBERS IN CORPORATION

**DEPARTMENTAL COMMENTS:**

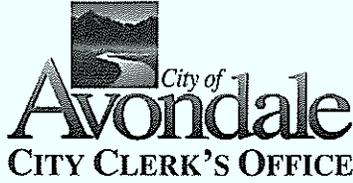
APPROVED

DENIED

*Jesada Heab*  
SIGNATURE  
*Privilege Tax Auditor*  
TITLE

*5/21/09*  
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: JUNE 1, 2009  
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: MAY 21, 2009**



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

ACQUISITION OF CONTROL

**ROUTING:**

- POLICE DEPARTMENT  
 FIRE DEPARTMENT  
 DEVELOPMENT SERVICES

---

**APPLICANT'S NAME:** H. J. LEWKOWITZ

**BUSINESS NAME:** PILOT TRAVEL CENTERS

**ADDRESS:** 900 NORTH 99<sup>TH</sup> AVENUE

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

**PURPOSE OF EXTENSION:** CHANGE OF MEMBERS IN CORPORATION

**DEPARTMENTAL COMMENTS:**

APPROVED  
 DENIED

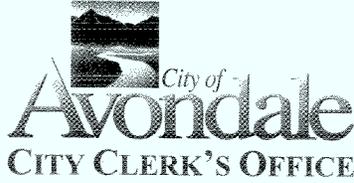
A handwritten signature in black ink, appearing to be "Paul J. Lewkowitz", written over a horizontal line.

SIGNATURE

TITLE

5/7/09  
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: JUNE 1, 2009  
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: MAY 14, 2009**



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

ACQUISITION OF CONTROL

**ROUTING:**

POLICE DEPARTMENT

FIRE DEPARTMENT

DEVELOPMENT SERVICES

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**APPLICANT'S NAME:** H. J. LEWKOWITZ

**BUSINESS NAME:** PILOT TRAVEL CENTERS

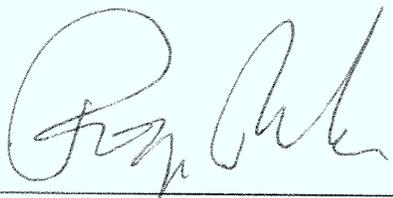
**ADDRESS:** 900 NORTH 99<sup>TH</sup> AVENUE

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

**PURPOSE OF EXTENSION:** CHANGE OF MEMBERS IN COPORATION

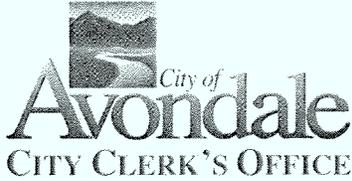
**DEPARTMENTAL COMMENTS:**

APPROVED  
 DENIED

  
\_\_\_\_\_  
SIGNATURE  
FIRE MARSHAL  
\_\_\_\_\_  
TITLE

5/7/09  
\_\_\_\_\_  
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: JUNE 1, 2009  
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: MAY 14, 2009**



**DEPARTMENTAL REVIEW FORM**

**TYPE OF LICENSE:**

ACQUISITION OF CONTROL

**ROUTING:**

POLICE DEPARTMENT

FIRE DEPARTMENT

DEVELOPMENT SERVICES

**APPLICANT'S NAME:** H. J. LEWKOWITZ

**BUSINESS NAME:** PILOT TRAVEL CENTERS

**ADDRESS:** 900 NORTH 99<sup>TH</sup> AVENUE

**CITY:** AVONDALE      **STATE:** AZ      **ZIP CODE:** 85323

**PURPOSE OF EXTENSION:** CHANGE OF MEMBERS IN CORPORATION

**DEPARTMENTAL COMMENTS:**

APPROVED

DENIED

*Eric Morgan*  
SIGNATURE  
Planner II  
TITLE

5/12/2009  
DATE

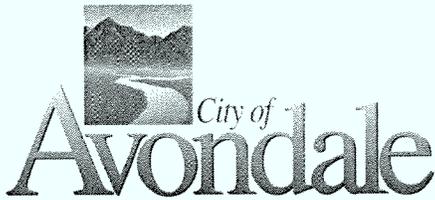
APPROVED

DENIED

\_\_\_\_\_  
SIGNATURE  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: JUNE 1, 2009  
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: MAY 14, 2009**



## DEVELOPMENT SERVICES

### MEMORANDUM

---

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**DATE:** May 11, 2009

**TO:** Carmen Martinez, City Clerk

**PREPARED BY:** Eric Morgan, Planner II (623) 333-4017

**SUBJECT:** Acquisition of Control - Series 10 Liquor License Off-sale Retailer's Beer & Wine  
900 N. 99<sup>th</sup> Avenue (SWC of Roosevelt Street & 99<sup>th</sup> Avenue)

The subject property is located at 900 North 99<sup>th</sup> Avenue, the southwest corner of Roosevelt Street and 99<sup>th</sup> Avenue. The site is known as the Pilot Travel Center, and operates as a gas station with convenience store, truck stop with truck wash, and an attached restaurant with a drive-thru (Wendy's).

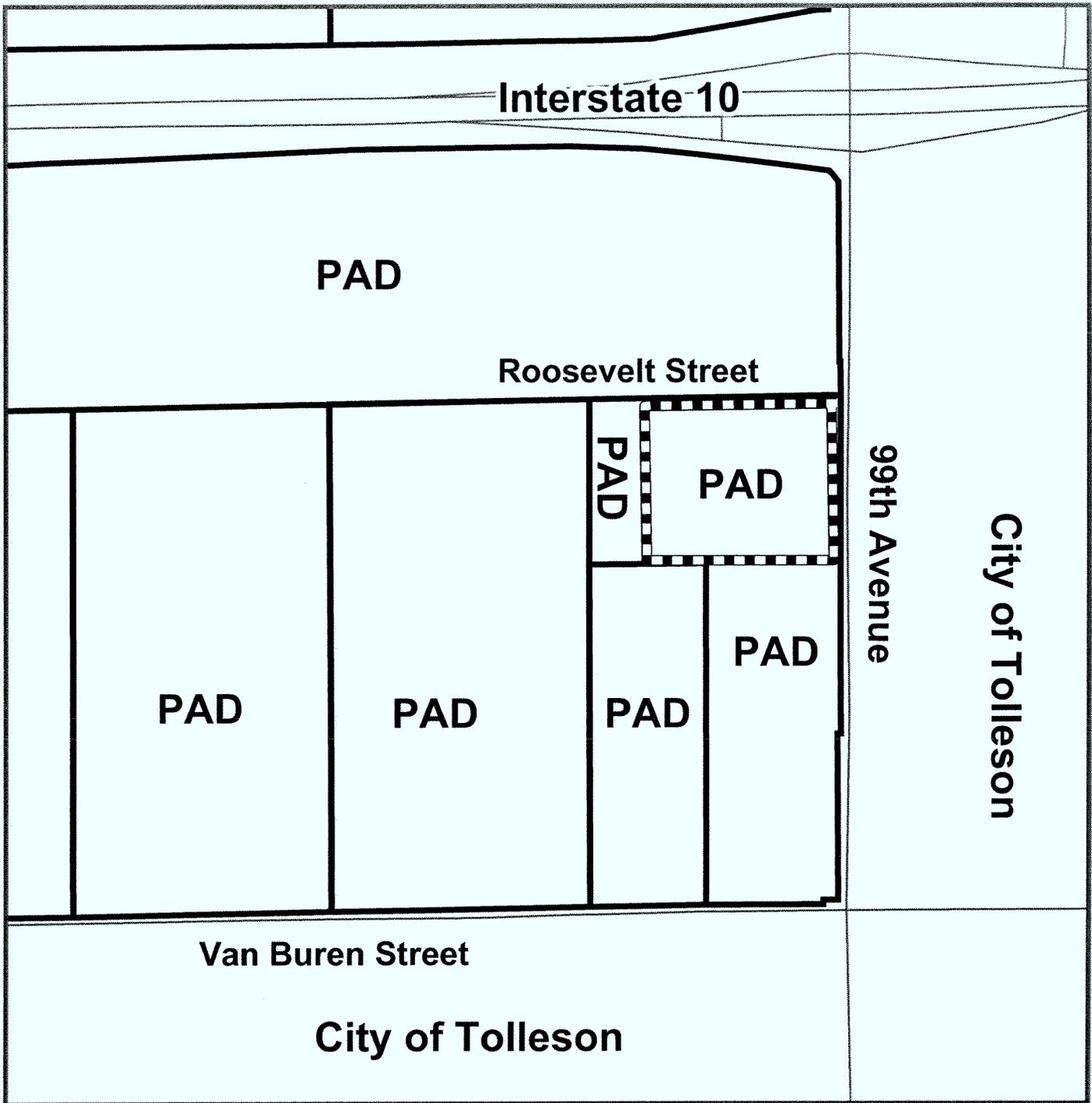
The General Plan designates the property as Employment.

The subject property is located within the Interstate Commerce Center Planned Area Development (PAD) Zoning District. This PAD allows for the above uses all as permitted uses. There are no outstanding use violations currently at the site.

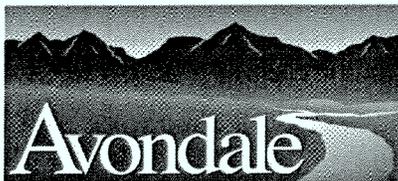
For Series 10 (sale of beer and wine for off-site consumption) Licenses, there is no State Statute requirement for a minimum separation from schools and churches by State Statute.

Staff recommends that this liquor license application be approved.

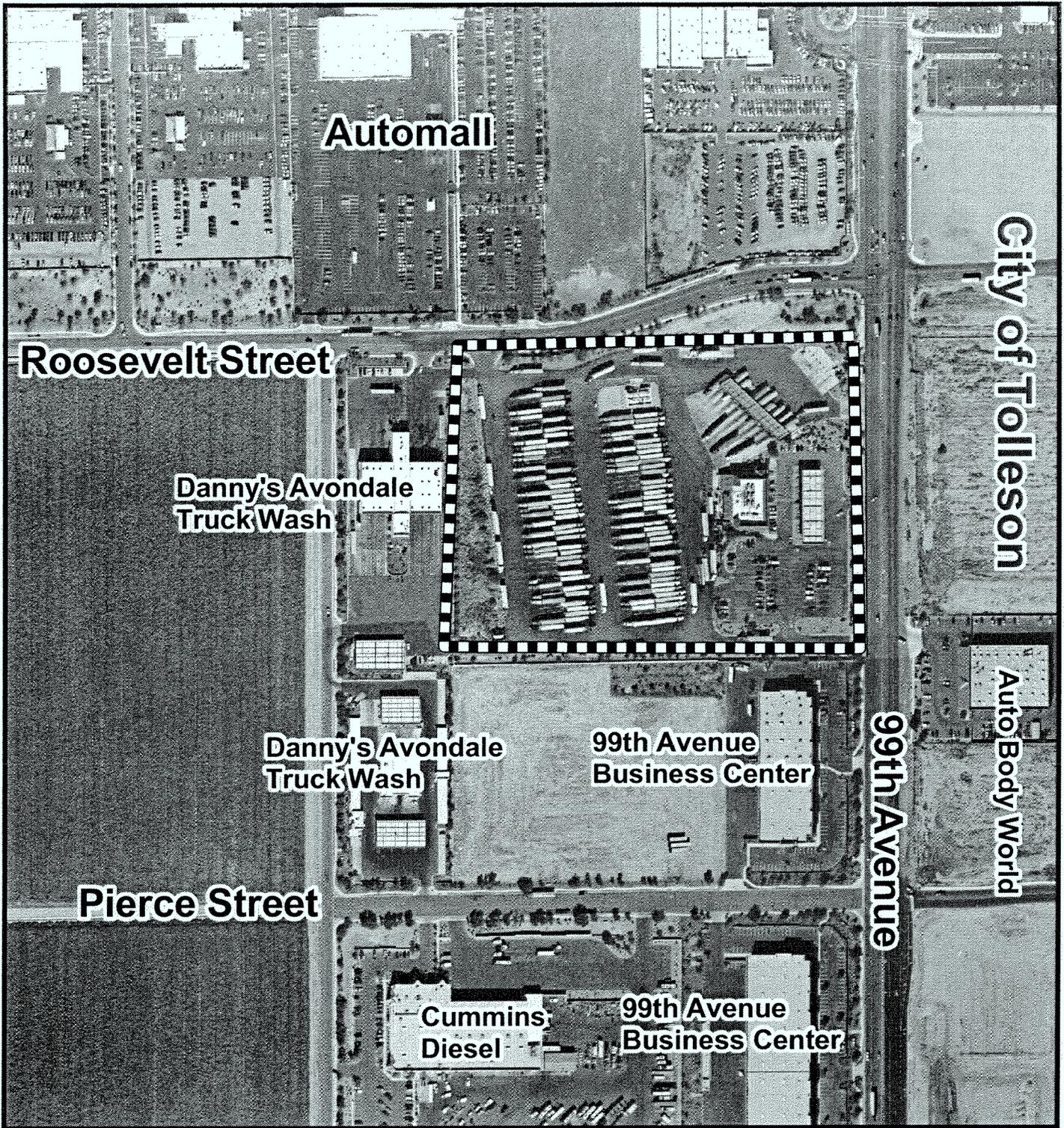
Attachment: 2009 Aerial Photo  
Zoning Vicinity Map



### Zoning Vicinity Map



Pilot Travel Center



**Automall**

**Roosevelt Street**

**Danny's Avondale  
Truck Wash**

**Danny's Avondale  
Truck Wash**

**Pierce Street**

**Cummins  
Diesel**

**99th Avenue  
Business Center**

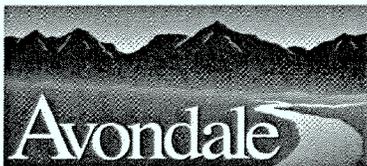
**99th Avenue  
Business Center**

**City of Tolleson**

**Auto Body World**

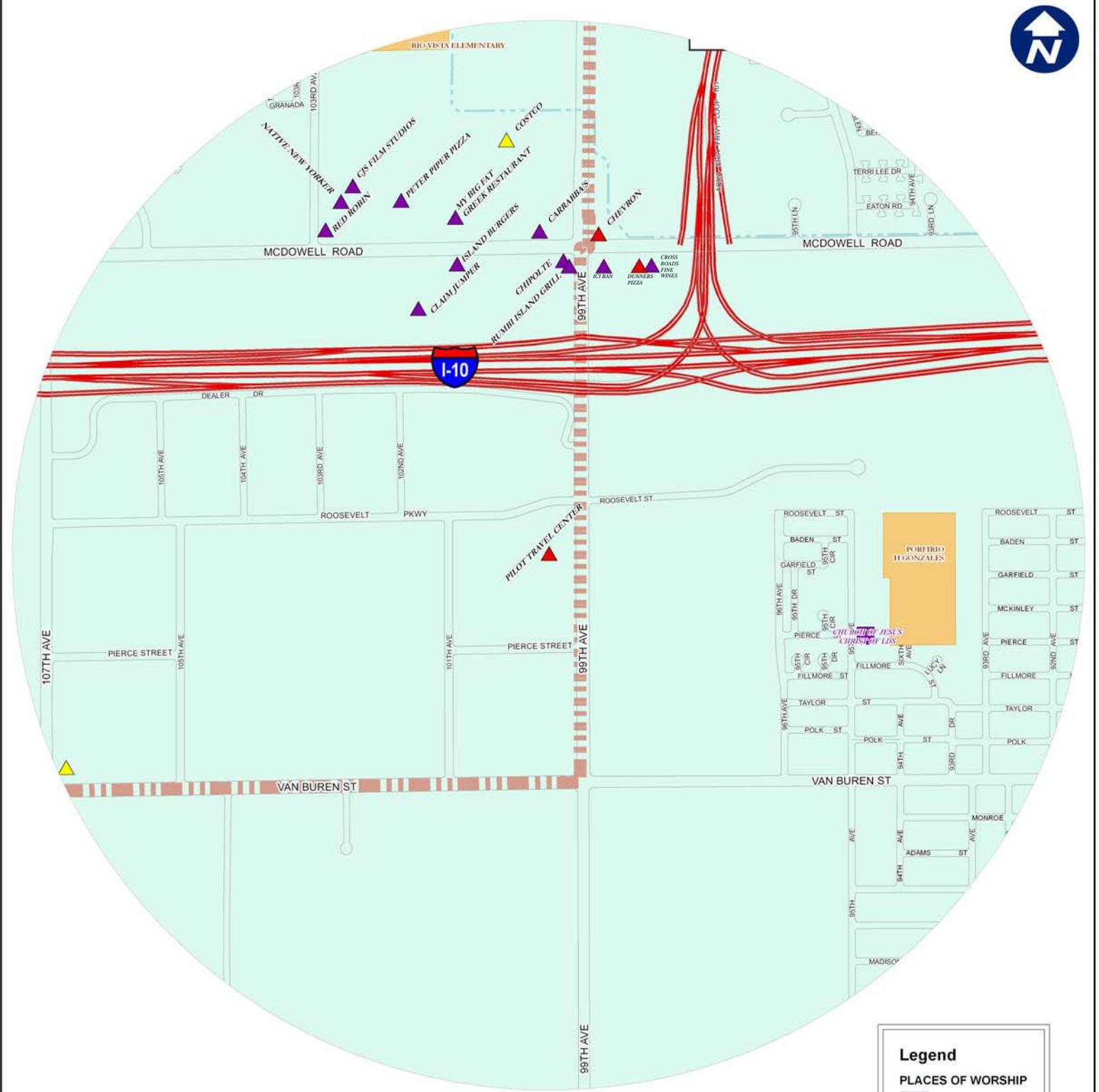
**99th Avenue**

## 2009 Aerial Photograph



**Subject Property**





**PILOT TRAVEL CENTER**  
**900 N 99th Ave**  
**1 Mile Buffer**

**Legend**

**PLACES OF WORSHIP**

- CHURCH (purple triangle)

**LIQUOR LICENSE**

- SERIES 6 (orange triangle)
- SERIES 7 (green triangle)
- SERIES 9 (yellow triangle)
- SERIES 10 (red triangle)
- SERIES 12 (cyan triangle)
- SERIES 14 (purple triangle)
- SERIES 16 (dark purple triangle)
- SCHOOLS (orange rectangle)

# NOTICE

APPLICATION TO SELL ALCOHOLIC BEVERAGES  
DATE POSTED: APRIL 30, 2009

A HEARING ON A LIQUOR LICENSE APPLICATION  
SHALL BE HELD BEFORE THE AVONDALE CITY COUNCIL

LOCATION: 11465 WEST CIVIC CENTER DRIVE  
DATE: MONDAY, JUNE 1, 2009  
AT 7:00 PM.

(HEARING DATES SUBJECT TO CHANGE,  
TO VERIFY CALL: 623-333-1200)

**\*\*SERIES 10: OFF-SALE RETAILERS LICENSE  
TO SELL BEER & WINE\*\***

THE LOCAL GOVERNING BODY WILL RECOMMEND TO THE STATE LIQUOR BOARD WHETHER THE BOARD SHOULD GRANT OR DENY THE LICENSE. THE STATE LIQUOR BOARD MAY HOLD A HEARING TO CONSIDER THE RECOMMENDATION OF THE LOCAL GOVERNING BODY. ANY PERSON RESIDING OR OWNING OR LEASING PROPERTY WITHIN A ONE-MILE RADIUS MAY CONTACT THE STATE LIQUOR BOARD IN WRITING TO REGISTER AS A PROTESTER. TO REQUEST INFORMATION REGARDING PROCEDURES BEFORE THE BOARD AND NOTICE OF ANY BOARD HEARINGS REGARDING THIS APPLICATION, CONTACT: STATE LIQUOR BOARD - 300 W. WASHINGTON, 5TH FLOOR, PHOENIX, AZ 85007 STATE LIQUOR DEPT. (602) 542-9769. INDIVIDUALS REQUIRING ADA ACCOMMODATIONS CALL THE CITY CLERK AT: 623-333-1200.

ARIZONA DEPARTMENT OF LIQUOR LICENSING & CONTROL  
800 W Washington St. Floor Phoenix, AZ 85007-2834 (602) 342-3141  
400 W Congress #501 Phoenix, AZ 85015-1362 (520) 529-8999

APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL - RESTRUCTURE

Check one:  
Agent Change  Acquisition of Control  Restructure

SECTION 1 - COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL, OR RESTRUCTURE.  
If you intend to acquire or acquire control of the above-described premises, you must complete this section. If you are not acquiring or acquiring control of the premises, you may skip this section.

1. Check one:  
 Acquisition of Control  Agent Change  Restructure

2. Business Name: AVONDALE CITY COUNCIL (SEE ATTACHED)

3. Business Address: 11465 WEST CIVIC CENTER DRIVE City: AVONDALE State: AZ Zip: 85007

4. Mailing Address: 11465 WEST CIVIC CENTER DRIVE City: AVONDALE State: AZ Zip: 85007

5. Business Phone: (602) 333-1200 Home Phone: \_\_\_\_\_

6. Check the appropriate circle the name of any person of the premises who:  Owns  Does Not Own. This person is the owner of the premises.

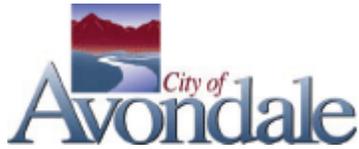
7. Has this business ever been licensed by the State of Arizona?  Yes  No. If yes, submit a certified copy of license.

SECTION 2 - COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE.  
This section must be completed if you are acquiring or acquiring control of the premises. If you are not acquiring or acquiring control of the premises, you may skip this section.

8. The individual name or names of all persons of the premises, address of each, residence in AZ: \_\_\_\_\_

NAME	ADDRESS	RESIDENCE IN AZ
PILOT CORPORATION	MEMPHIS	MEMPHIS, TN 38103
PROPELLER CORP.	MEMPHIS	MEMPHIS, TN 38103





# CITY COUNCIL REPORT

**SUBJECT:**

Continuance - Liquor License - My Big Fat Greek  
Restaurant

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council  
**FROM:** Carmen Martinez, City Clerk (623) 333-1214  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the Council continue to the June 15 meeting consideration of the application submitted by Mr. Juan Ortiz for a Series 16 (State Series 12) restaurant license to sell all spirituous liquors at My Big Fat Greek Restaurant located at 10040 West McDowell Road in order to allow time for the applicant to resolve outstanding issues.

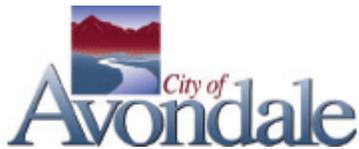
**RECOMMENDATION:**

Staff is requesting that the City Council continue consideration of this item to the Regular Meeting of June 15, 2009.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
Appointment of Judges Pro Tempore

**MEETING DATE:**  
June 1, 2009

**TO:** Mayor and Council  
**FROM:** Abril Ruiz-Ortega, Court Administrator (623)333-5822  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that City Council re-appoint ten judges pro tempore to one year terms expiring on June 1, 2010.

**BACKGROUND:**

Avondale City Code section 5-1 (f) gives the City Council the authority to appoint judges pro tempore. During its June 2, 2008 meeting, the City Council appointed pro tem judges to serve one year terms to fill in during the absence of the City Judge. Their terms expire on June 2, 2009.

**DISCUSSION:**

Judge Lynch is recommending the Council re-appoint the following to an additional one-year term through June 1, 2010:

Hon. N. Bruce Randall  
Hon. Alicia Lawler  
Hon. Casey Newcomb  
Hon. William Molner  
Hon. Craig Ring  
Hon. E. Evans Farnsworth  
Hon. Joanne Landfair  
Hon. Debra Ann Weecks  
Hon. Rachel Strachan  
Hon. Michael Carroll

The panel of qualified judges authorized to serve in Avondale fill in for the absent City Judge when all sitting judges are summoned on an annual basis to judicial conferences and mandatory training. Pro tem judges also fill in during the City Judge's scheduled vacation leave and sick leave.

The judges named above have been admitted to the practice of law for at least five years as required by Avondale City Code, Section 5-1 (f); all have extensive judicial experience in the courts of limited jurisdiction and all have completed the application, interview and selection process conducted with the help of the Avondale Human Resources department.

**BUDGETARY IMPACT:**

Judges pro tempore are compensated at an hourly rate of \$55.00 per hour. This rate is competitive with other West Valley courts. Funding for the pro tem judges is provided in the Court operating budget in the Professional Services account.

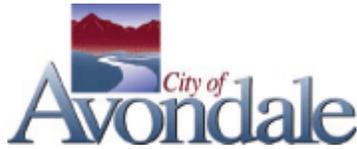
**RECOMMENDATION:**

Staff recommends that City Council re-appoint the existing pro tem judges listed above to one-year terms expiring on June 1, 2010.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
Purchase Agreement with Felix Construction

**MEETING DATE:**  
June 1, 2009

**TO:** Mayor and Council  
**FROM:** Wayne Janis, Water Resources Director (623)333-4444  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a construction agreement by attaching to a City of Peoria Job Order Contract with Felix Construction to complete electrical upgrades at the Northside Booster Station and the 10th Street Lift station to support the installation of new communications towers for an amount not to exceed \$52,462 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

City Council awarded a contract to Network Infrastructure Corporation Communications on March 9, 2009 to construct new communications towers to enhance the City's wireless communications network. Under the terms of the agreement, Network Infrastructure Corporation will construct 100 foot communications towers at the Northside Booster Station, 10th Street Lift Station and the Water Reclamation Facility. In order to complete the installation of the new communications towers, it will be necessary to complete a number of electrical upgrades at the Northside booster station and the 10th Street lift station.

The electrical work associated with the communications towers were originally included with a pump upgrade project at the booster station and electrical upgrades at the lift station, and therefore, were not included in the Network Infrastructure Corporation agreement. However the pump upgrades and electrical work at the lift station have been delayed, requiring the work associated with the communications towers to proceed as a separate project.

**DISCUSSION:**

Felix Construction was selected from a list of qualified contractors on a City of Peoria Job Order Contract list. Felix Construction has the experience and expertise to complete the following tasks associated with the electrical upgrades to support the installation of the communications towers.

- Saw cut asphalt at Northside booster station
- Installation of conduit banks from existing power panel to communications towers
- Install new electrical wiring and new circuit breakers for communications cabinets
- Backfill conduit trench
- Replace asphalt at Northside booster station

**BUDGETARY IMPACT:**

Funding is available in the R&M Wells (501-9122-00-6740) project account to complete these upgrades.

**RECOMMENDATION:**

Staff recommends that the City Council approve a construction agreement by attaching to a City of Peoria Job Order Contract with Felix Construction to complete electrical upgrades at the Northside Booster Station and the 10th Street Lift Station to support the installation of new communications towers for an amount not to exceed \$52,462 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

 [Purchase Agreement](#)

**PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
FELIX CONSTRUCTION COMPANY**

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of June 1, 2009, between the City of Avondale, an Arizona municipal corporation (the "City") and Felix Construction Company, an Arizona corporation ("Contractor").

**RECITALS**

A. After a competitive procurement process, the City of Peoria ("Peoria") entered into Job Order Contract No. P08-0047 with the Contractor for an indefinite quantity of and indefinite delivery for various utility related construction projects (the "Peoria JOC"), attached hereto as Exhibit A and incorporated herein by reference.

B. The City has determined that it is necessary to purchase electrical system construction services under the terms and conditions of the Peoria JOC for the installation of conduit, electrical cabling and other improvements related to existing communications towers at Northside Booster Station and 10th Street Lift Station (the "Services").

C. The City desires to utilize the Services under the Peoria JOC.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Contractor hereby agree to amend the Agreement as follows:

1. Term of Agreement. The term of the Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until July 30, 2009.

2. Scope of Work. Contractor shall provide the Services under the terms and conditions of the Peoria JOC, attached hereto as Exhibit A, and as more particularly set forth in the Project Scope/Quote Document, attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City shall pay Contractor an aggregate price not to exceed \$52,462.00 for the Services as set forth in the Electrical Estimate Summary attached hereto as Exhibit C and incorporated herein by this reference.

4. Agreement Subject to Appropriation. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Contractor fully informed as to the availability of funds for the Agreement. The obligation of the

City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Agreement.

5. Conflict of Interest. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

6. Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Contractor and its subcontractors are complying with the warranty under Section 7 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (1) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (2) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 7 below. To the extent necessary for the City to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

7. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

8. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or and 35-393, as applicable. If the City determines that the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to the Peoria JOC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“City”**

CITY OF AVONDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Charles P. McClendon, City Manager

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

**“Contractor”**

FELIX CONSTRUCTION COMPANY, an  
Arizona corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona  
municipal corporation, on behalf of the City of Avondale.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \_\_\_\_\_ as \_\_\_\_\_ of FELIX  
CONSTRUCTION COMPANY, an Arizona corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

EXHIBIT A  
TO  
PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
FELIX CONSTRUCTION COMPANY

[Peoria JOC]

See following pages.

07578V



# City of Peoria, Arizona Job Order Contract



Statement of Qualifications No: P08-0047      Project Number

Job Description: Water, Waste Water Treatment and Offsite Facilities Projects      Project Name

Location: City of Peoria, Materials Management      Contact: Peggy A. Ferrin  
Mailing Address: 8314 W. Cinnabar St., Peoria, AZ 85345      Phone: (623) 773-7780

### OFFER

Contractor's License Number: 70935 A

Felix Construction Company

Job Order Contractor Name

Authorized Signature for Offer

309 East 10<sup>th</sup> Drive

DONALD FELIX

Address

Printed Name

Mesa, Arizona 85210  
City State Zip Code

PRESIDENT  
Title

(480) 464-0011 (480) 464- 0078  
Telephone Facsimile

don.f@felixconstruction.com  
E-mail

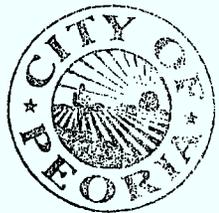
### ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is hereby accepted. The Contractor is now bound to sell the construction services listed by the attached award notice based upon the solicitation, including all terms conditions, specifications, amendments, etc., of the contract and the Contractor's offer as accepted by the City. The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until Contractor receives an executed Notice to Proceed and Purchase Order.

Attested by:   
Mary Jo Kief, City Clerk

City of Peoria, Arizona  
Eff Date: April 11, 2008  
Approved as to form:

Stephen M. Kemp, City Attorney



City Seal

CC  
ACON 23908  
Contract Number

Awarded on April 10 2008

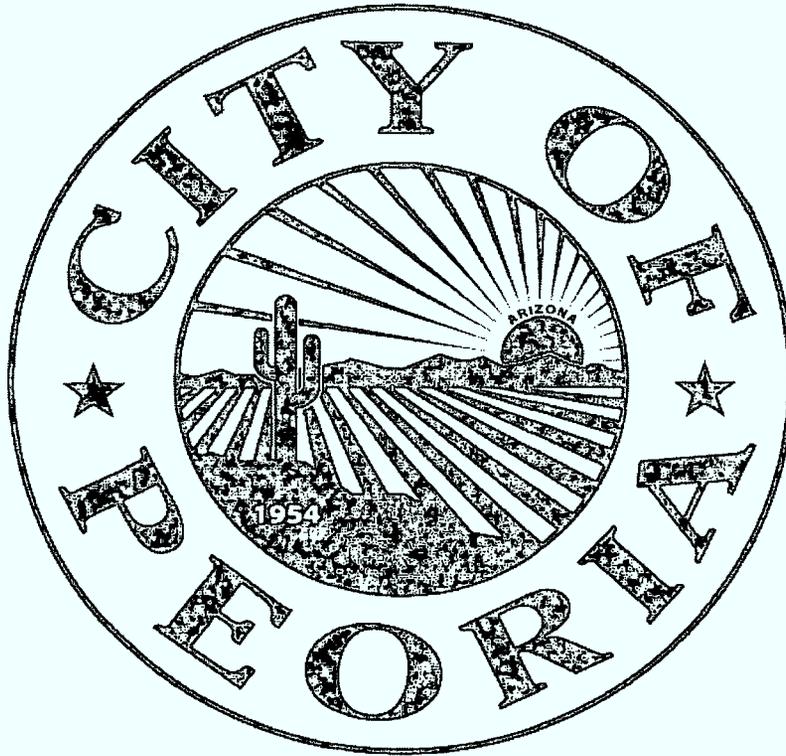
Official File

Herman Koerbergen, Materials Manager

A CON 23908

SCANNED

**JOB ORDER CONTRACT**



**P08-0047**

**Water, Waste Water Treatment & Offsite Facilities Projects**

**CONTRACT FOR CONSTRUCTION**

**JOB ORDER CONTRACT AGREEMENT**

**FELIX CONSTRUCTION COMPANY**

**A CON 23908**

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**A CON 23908i**

**JOB ORDER CONTRACTING  
CONTRACT**

THIS CONTRACT is entered into and made effective the 11<sup>th</sup> day of April 2008, by and between the City of Peoria, Arizona, an Arizona charter municipality (the "Owner"), and Felix Construction Company (the "Job Order Contractor"). The parties agree as follows:

**1. DEFINITIONS.**

**1.1. Owner.** Owner means Owner's senior manager, Contracting Officer or a duly authorized representative which means any person specifically authorized to act for Owner by executing the Contract and any modification thereto. Owner's duties include administration of the Contract, including the negotiation of change orders and modifications and assessing Job Order Contractor's technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract documents.

**1.2. Job Order Contractor.** Job Order Contractor means Job Order Contractor's senior manager or its duly authorized representative or any person specifically authorized to act for Job Order Contractor by executing the Contract, and any modifications thereto. Job Order Contractor's duties include administration of the Contract and performance of the Work.

**1.3. Contract.** Contract means this agreement including its attachments and any Job Orders that may be issued.

**1.4. Subcontract.** Subcontract means any Contract including purchase orders (other than one involving an employer-employee relationship) entered into by Job Order Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

**1.5. Job Order.** Job Order means a specific written agreement between the Owner and the Job Order Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

**1.6. Work.** Work means in response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in Attachment "A" Contract Pricing Coefficients and in Attachment "B" Scope of Services both of which are incorporated herein and made a part hereof.

**1.7. Punch List Preparation.** A minimum of 20 days prior to Final Completion the Job Order Contractor, in conjunction with the Owner, shall prepare a comprehensive list of Punch list items, which the Owner may edit and supplement. The Job Order Contractor shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Job Order Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall not

ACON 23908

commence until the date of Final Completion unless otherwise provided in the Contract Documents.

**1.8. Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and acceptance by the Owner. Final Completion shall not be deemed to have occurred and no final payment shall be due the Job Order Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and acceptance and all required Final Completion close-out documentation items has been produced to the Owner by the Job Order Contractor.

**1.9. Reference Standards**

1.9.1 The "Uniform Standard Specifications for Public Works Construction" and the "Uniform Standard Details for Public Works Construction" which are sponsored and distributed by the Maricopa Association of Governments (MAG), and which are hereinafter referred to as the "MAG Specifications", are hereby adopted as part of these contract documents.

1.9.2 July 15, 1997 by Section 23-50a of Ordinance 97-38, the City of Peoria adopted the "Uniform Standard Details for Public Works Construction from the Maricopa County Association of Governments by reference with certain exceptions.

A copy of these documents is kept on file at the Office of the City Clerk at the City of Peoria.

**2. CONTRACT TERM**

**2.1. Contract Term.** The term of the Contract shall commence on the date it was executed by both parties and be in effect for one (1) years in accordance with the terms and conditions of this Contract. The term can be extended up to an additional four (4) years, the optional periods exercised in twelve (12) month. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order.

**2.2. Job Order.** In response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall perform the Work, except as may be specified elsewhere in the Contract, which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in *Attachment "A"* (Pricing Matrix) and in *Attachment "B"* (General Scope of Services) and *Attachment "C"* (SIQ, Proposal Response, Detailed Scope and Schedule) all of which are incorporated herein and made a part hereof.

**2.3. Mutual Agreement.** This Contract embodies the agreement of Owner and Job Order Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order, nor requiring Job Order Contractor to accept any Job Order, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

A CON 23908

**3. PERFORMANCE OF THE WORK**

**3.1. Job Order Agreement.** Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Owner. Job Orders shall be in accordance with the requirements specified in *Attachment "B"* (General Scope of Services), and shall set forth, with the necessary particularity, the following:

- 3.1.1. Contract number along with Job Order Contractor's name;
- 3.1.2. Job Order number and date;
- 3.1.3. The agreed Work and applicable technical specifications and drawings;
- 3.1.4. The agreed period of performance and, if required by Owner, a work schedule;
- 3.1.5. The place of performance;
- 3.1.6. The agreed total price for the Work to be performed;
- 3.1.7. Submittal requirements;
- 3.1.8. Owner's authorized representative who will accept the completed Work;
- 3.1.9. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
- 3.1.10. Such other information as may be necessary to perform the Work.

**3.2. Job Order Contractor Duties and Obligations.**

**3.2.1. Permits & Responsibilities.** Job Order Contractor shall be responsible for processing of drawings, for approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Owner will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the Contract.

**3.2.2. Outdoor Construction Restrictions.** Peoria Ordinance No. 98-11 restricts outdoor construction as listed in the following table:

	Construction Type	April 2 – September 29	September 30 – April 1
A	Concrete Work	5:00 a.m. to 7:00 p.m.	6:00 a.m. to 7:00 p.m.
B	Other Construction (within 500 feet of residential area)	6:00 a.m. to 7:00 p.m.	7:00 a.m. to 7:00 p.m.
C	Construction Work (more than 500 feet of residential area)	5:00 a.m. to 7:00 p.m.	5:00 a.m. to 7:00 p.m.

A CON 239080

3.2.2.1. No interference with the traffic flow on arterial streets shall be permitted during the hours of 6:00 a.m. to 8:30 a.m. or from 4:00 p.m. to 7:00 p.m. unless prior authorization is obtained in writing by the City of Peoria Traffic Engineer or their assignee. Specific work hours may be stipulated by the City of Peoria on the project barricade plan.

3.2.2.2. During off peak hours, the minimum number of lanes shall be two lanes (one in each direction) on streets with four lanes or less and four lanes (two in each direction) on streets with five or more lanes.

3.2.2.3. Night work must have prior authorization from the City. In addition, certain areas of the City may have seasonal or special event restrictions for construction work as designated by the City on a case by case basis.

**3.2.3. Jobsite Superintendent.** During performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign a competent superintendent who will supervise the performance of Work and is satisfactory to Owner and has authority to act for Job Order Contractor.

**3.2.4. Construction Layout.** Job Order Contractor shall lay out its work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

**3.2.5. Survey Control Points.** Existing survey markers (either brass caps or iron pipes) shall be protected by the Contractor or removed and replaced under direct supervision of the City Engineer or his authorized representatives. Survey monuments shall be constructed to the requirements of MAG Specifications, Section 405, and Standard Details. Lot corners shall not be disturbed without knowledge and consent of the property owner. The Contractor shall replace benchmarks, monuments, or lot corners moved or destroyed during construction at no expense to the Owner. Contractor and his sureties shall be liable for correct replacement of disturbed survey benchmarks except where the Owner elects to replace survey benchmarks using his own forces.

**3.2.6. Traffic Regulations.** All traffic affected by this construction shall be regulated in accordance with the City of Phoenix – Traffic Barricade manual, latest edition, and the City of Phoenix in the Traffic Barricade Manual shall be referred to as the City of Peoria City Engineer for interpretation.

At the time of the pre-construction conference, the Contractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measure, as necessary. At the same time the City will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried throughout the work area in an effective manner and that manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents.

A CON 239084

3.2.4.1 The following shall be considered major streets: All major Parkway, mile (section line), arterial and collector (mid-section line and quarter section line) streets so classified by the City of Peoria.

3.2.4.2 All traffic control devices required for this project shall be the responsibility of the Contractor. The Contractor shall place advance warnings; **REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT** and **DO NOT PASS** signs in accordance with the Traffic Barricade Manual.

3.2.4.3 The Contractor shall provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights signals and signs, and shall take all necessary precautions for the protection of the work and safety of the public. The Contractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3.2.4.4. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Contractor shall conform to the standard design, generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Contract.

3.2.4.5 The Contractor shall insure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Contractor shall notify the Inspector at least forty eight (48) hours in advance for City personnel to temporarily relocate said signs. The City Engineer will re-set all traffic and street name signs to permanent locations when notified by the Engineer that construction is complete unless otherwise stated in the specifications Payment for this item shall be made at the contract lump sum price for TRAFFIC CONTROL.

3.2.4.6 When construction activities or traffic hazards at the construction site require the use of flagmen, it shall be the Contractor's responsibility to provide adequate personnel including flagmen to direct traffic safely.

3.2.4.7 Manual traffic control shall be in conformity with the Traffic Barricade Manual, except the liaison officer shall be contacted at the Peoria Police Department at telephone number (623) 773-7052.

3.2.4.8 When traffic hazards at construction sites warrant the use of certified police personnel to direct traffic, arrangement should be made with the liaison officer at the Peoria Police Department at telephone number (623) 773-7052.

3.2.4.9 The assembly and turnarounds of the Contractor's equipment shall be accomplished using adjacent local streets when possible.

3.2.4.10 Equipment used and/or directed by the Contractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Provide a flagman or officer to assist with this operation.

A CON 239084

3.2.4.11 During construction, it may be necessary to alter traffic control. Alterations shall be in accordance with the Traffic Barricade Manual.

3.2.4.12 no street within this project may be closed to through traffic or to local emergency traffic without prior written approval of the City Engineer of the City of Peoria. Written approval may be given if sufficient time exists to allow for notification of the public at least two (2) days in advance of such closing. Partial closure of streets within the project shall be done in strict conformity with written directions to be obtained from the City Engineer.

3.2.4.13 Caution should be used when excavating near intersections with traffic signal underground cable. Notify the City Engineer twenty four (24) hours in advance of any work at such intersections. The Contractor shall install and maintain temporary overhead traffic signal cable as specified by the City Engineer when underground conduit is to be severed by excavations at intersections. The Contractor shall provide an off-duty uniformed police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City Engineer's satisfaction. Magnetic detector loops shall under no circumstances be spliced.

3.2.4.14 The Contractor shall address how local access to adjacent properties will be handled in accordance with the specification herein.

3.2.4.15 Where crossings of existing pavements occur, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow as determined by the City Engineer or his authorized representative. If plates cannot be used, crossings shall be back-filled or the Contractor shall provide a detour.

**3.2.7. Operations & Storage.** Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.

**3.2.8. Cleaning Up & Refuse Disposal.** Job Order Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly condition satisfactory to Owner.

**3.2.8.1.** Final cleanup of the premises shall be included in the period of performance of the Job Order.

**3.2.8.2.** Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site.

**3.2.8.3.** Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Job Order Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

**3.2.8.4.** The Contractor and/or subcontractor shall be required to use the City of Peoria Solid Waste Division's services for commercial collection of Solid Waste. This requirement is not intended to preclude other methods or means for hauling debris or excess

material from the project site such as trucking large volumes of material, including soil, building demolition, or hazardous and special wastes. The intent is to use City of Peoria Solid Waste service where standard waste disposal is needed. Specifically, all roll-off and front-load containers used on a City of Peoria construction site shall be contracted for through the City of Peoria Solid Waste Division at the prevailing rate. It is the contractor's responsibility to contact and make all necessary arrangements with the City of Peoria Solid Waste Division for these services. Any and all charges for these services are the responsibility of the contractor. The City Solid Waste Division may, at its option, decline to provide service for business reasons at any time during the contract. Any exceptions to this requirement will be at the sole discretion of the City Solid Waste Division. Please contact the Solid Waste Customer Service Representatives at 623-773-7160.

**3.2.9. Existing Improvements and Utilities.** Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to Job Order Contractor.

**3.2.10. Safety.** Job Order Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Job Order Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

**3.2.10.1. Job Order Contractor Safety Compliance.** Job Order Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

**3.2.10.2. Job Order Contractor Provided Warnings.** Job Order Contractor shall provide warning signs, barricades and verbal warnings as required.

**3.2.10.3. Emergency Procedures.** Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

**3.2.10.4. Accident Notification.** Job Order Contractor shall promptly notify Owner of any recordable accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Owner.

**3.2.10.5. Jobsite Safety Documents.** Job Order Contractor shall maintain a set of OSHA articles and Material Safety Data Sheets (MSDS) at the jobsite office as they apply to the Work being performed. Copies shall be provided to Owner when requested.

**3.2.10.6. Job Order Contractor's Safety Program.** Job Order Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of the initial Job Order and prior to the commencement of the Work.

**3.2.10.7. Job Order Contractor Safety Representative.** Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Job Order Contractor along with its safety policies and program procedures.

**3.2.10.8. Emergency Medical Treatment.** Job Order Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

**3.2.10.9. Owner's Right to Monitor.** Owner reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order in accordance with § 14.

**3.2.10.10. First Aid Kit.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a completely stocked first aid kit which contains all standard emergency medical supplies.

**3.2.10.11. Fire Extinguisher.** Job Order Contractor shall provide and maintain on the jobsite, at all times when Work is in progress, a fully charged fire extinguisher appropriate for the potential fire hazard.

**3.2.11. Dissemination of Contract Information.** Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Owner.

**3.2.12. Shop Drawings.** Job Order Contractor's duties under this Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner.

**3.2.13. Jobsite Drawings and Specifications.** Job Order Contractor shall keep on the Work site a copy of the drawings and specifications and shall at all times give Owner access thereto.

### **3.3. Owner Rights and Obligations.**

#### **3.3.1. Suspension of Work.**

**3.3.1.1. Owner's Written Order.** Owner may order Job Order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for a period of time that Owner determines reasonably appropriate.

**3.3.1.2. Work Delay or Suspension.** If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Owner in the administration of a

Job Order, or by Owner's failure to act within the time specified in the Job Order, an adjustment shall be made for any increase in the cost of performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

**3.3.1.3. Job Order Contractor Costs.** A claim under this Subparagraph 3.3.1 shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Owner in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

**3.3.2. Owner's Right to Possession.** Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, Owner shall furnish Job Order Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of Work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Owner possession or use shall not be deemed an acceptance of any Work under this Contract.

**3.3.2.1. Owner's Possession or Use.** While Owner has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of Subparagraph 3.2.1. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

**3.3.3. Other Contracts.** Owner may undertake or award other Contracts for additional work at or near the site of Work under this Contract. Job Order Contractor shall fully cooperate with the other Job Order Contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Job Order Contractor shall not commit or permit any act that will interfere with the performance of its Work by any other contractor or by Owner's employees.

**3.4. Job Order Amendment.** Job Orders may be amended by Owner in the same manner as they are issued.

**3.5. Job Order Value.** The maximum Job Order value is three million dollars (\$3,000,000).

#### **4. JOB ORDER DOCUMENTS**

**4.1. Specification and Drawings.** Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

**4.1.1.** Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Owner is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Owner, unless otherwise expressly stated.

**4.1.2.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

**4.2. Shop Drawings.** Shop drawings include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract. Shop drawings means drawings submitted to Owner by Job Order Contractor showing in detail:

**4.2.1.** The proposed fabrication and assembly of structural elements and,

**4.2.2.** The installation (i.e., form, fit and attachment details) of materials or equipment.

**4.2.3.** The construction and detailing of elements of the Work.

**4.3. Shop Drawing Coordination.** Job Order Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Job Order Contractor's approval may be returned for resubmission. Owner will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such approval shall be at Job Order Contractor's risk. Approval by Owner shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with § 4.4 below.

**4.4. Shop Drawing Modifications.** If shop drawings show variations from the Job Order requirements, Job Order Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

**4.5. Shop Drawing Omissions.** Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

**4.6. Owner Furnished Drawings.** Job Order Contractor shall check all Owner furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Any errors or omissions in Owner furnished drawings are the responsibility of the Owner to rectify, including associated costs. Figures marked on drawings shall be followed in preference to scale

measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

**4.7. Shop Drawing Submittal.** Job Order Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Job Order Contractor with annotation of approval or rejection within one (1) week after submission, unless a longer review period is necessary by mutual agreement between Owner and Job Order Contractor.

**4.8. Use of Job Order Documents.** All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever. In addition, Owner agrees to hold Job Order Contractor harmless to the extent permitted by law from any legal liability arising out of the Owner's use of such materials.

## **5. MATERIAL AND WORKMANSHIP**

**5.1. Suitability of Material and Equipment.** All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Owner, is equal to that named in the specifications.

**5.2. Owner Approval.** Job Order Contractor shall obtain Owner's approval of the equipment to be incorporated into the Work. When requesting approval, Job Order Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the equipment. When required by the Contract or by Owner, Job Order Contractor shall also obtain Owner's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

**5.3. Testing of Materials.** Unless otherwise specified in a Job Order, the Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work. Reimbursement for testing required by third party entities will be included in the individual Job Order.

**5.4. Workmanship.** All work under the Contract shall be performed in a skillful and workmanlike manner.

## **6. SITE CONDITIONS**

**6.1. Site Investigation.** Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

**6.1.1.** Conditions bearing upon transportation, disposal, handling, and storage of materials;

**6.1.2.** The availability of labor, water, electric power, and roads;

**6.1.3.** Uncertainties of weather, river stages, tides, or similar physical conditions at the site;

**6.1.4.** The visible conformation and conditions of the ground; and

**6.1.5.** The character of equipment and facilities needed preliminary to and during work performance.

**6.2. Surface and Subsurface Investigation.** Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract. Owner will provide to Job Order Contractor all subsurface investigation reports it has commissioned, and has knowledge of, that reasonably reflect expected conditions at the location of the Job Order.

**6.3. Differing Site Conditions.** Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:

**6.3.1.** Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or

**6.3.2.** Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**6.4. Owner Investigation.** Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

**6.5. Written Notice of Differing Site Conditions.** No request by Job Order Contractor for an equitable adjustment to a Job Order under this § 6 shall be allowed, unless Job Order Contractor has given the written notice required.

**6.6. Payment Adjustment.** No request by Job Order Contractor for an equitable adjustment to a Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

## 7. JOB ORDER SCHEDULES

**7.1. Construction Schedule.** If the Job Order Contractor fails to submit a schedule with the Job Order, Owner may withhold approval of progress payments until Job Order Contractor submits the required schedule. If required, the Job Order Contractor will submit for approval with the signed Job Order a practicable schedule showing the sequence in which Job Order Contractor proposes to perform the Work, and the dates on which Job Order Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case, the basic information should be the same and the schedule or chart must contain as a minimum:\

7.1.1. A detailed list of work activities or work elements.

7.1.2. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin.

7.1.3. Show early start and early finish dates along with late start and late finish dates for each work activity or work element.

**7.2. Failure to Submit Schedule.** Failure of Job Order Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Job Order Contractor's right to proceed with the Work if not cured within seven (7) days after written notice is provided, or any separable part of it, in accordance with § 14.

**7.3. Progress Report.** Job Order Contractor shall submit a progress report every thirty (30) days, or as directed by Owner, and upon doing so shall immediately deliver a current schedule to Owner if it has materially changed since the last submission of a schedule. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Without additional cost to Owner, Owner may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.

**7.4. Emergency Work.** Job Order Contractor will give top priority to any emergency Work Owner may have and will allocate all resources necessary to accomplish such Work in accordance with Owner's schedule requirements. To the extent the Job Order Contractor incurs additional cost, expense or schedule delay in performing Owner's emergency Work, Owner will equitably adjust the Contract in accordance with § 10.

## 8. INSPECTION OF CONSTRUCTION AND ACCEPTANCE

**8.1. Job Order Contractor Inspection System.** Job Order Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Job Order Contractor shall maintain complete inspection records and make them available to Owner. All work shall be conducted under the general direction of Owner and is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

**8.2. Owner Inspections and Tests.** Owner inspections and tests are for the sole benefit of Owner and do not:

8.2.1. Relieve Job Order Contractor of responsibility for providing adequate quality control measures;

8.2.2. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance;

8.2.3. Constitute or imply acceptance; or

8.2.4. Affect the continuing rights of Owner after acceptance of the complete work.

**8.3. Job Order Contractor Responsibilities.** The presence or absence of an inspector does not relieve Job Order Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.

**8.4. Job Order Contractor Performance.** Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

**8.5. Job Order Contractor Corrective Work.** Job Order Contractor shall, without charge, replace or correct Work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises.

**8.6. Failure to Replace or Correct Work.** If Job Order Contractor does not promptly replace or correct rejected Work, Owner may:

8.6.1. By Contract or otherwise, replace or correct the Work and charge the cost to Job Order Contractor; or

8.6.2. Terminate for default Job Order Contractor's right to proceed.

**8.7. Owner Inspection before Acceptance.** If, before acceptance of the entire Work, Owner decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

**8.8. Owner Acceptance.** Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work that the Owner determines can be accepted separately. Acceptance shall

be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

## 9. INVOICING AND PAYMENT

9.1. **Compensation.** As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract, Owner shall pay Job Order Contractor the amounts specified in the individual Job Orders.

9.2. **Invoices.** Job Order Contractor shall submit invoices to the City of Peoria, attention Project Manager at the following address:

City of Peoria  
8401 W. Monroe St.  
Peoria, AZ 85345

9.3. **Progress Payments.** Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates of Work completed submitted by the Job Order Contractor and approved by Owner. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

9.4. **Retention.** Not applicable.

9.5. **Owner's Property.** All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:

9.5.1. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

9.5.2. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.

9.6. **Approval and Certification.** An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Owner or Owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this contract. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the Work.

9.7. **Unpaid Amounts.** Owner shall pay all unpaid amounts due Job Order Contractor under this Contract within thirty (30) days, after:

9.7.1. Completion and acceptance of the Work;

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9.7.2. Presentation of a properly executed invoice;

9.7.3. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically accepted from the operation of the release. A release may also be required of the assignee if Job Order Contractor's claim to amounts payable under this Contract has been assigned. Job Order Contractor shall complete a Job Order Contractor's release form acceptable to Owner; or

9.7.4. Consent of Job Order Contractor's surety, if any.

## 10. CHANGES

10.1. **Owner Changes.** Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:

10.1.1. In the specifications (including drawings and designs);

10.1.2. In Owner-furnished facilities, equipment, materials, services, or site; or

10.1.3. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

10.2. **Owner Change Orders.** Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Owner that causes a change shall be treated as a change order under this § 10; provided, that Job Order Contractor gives Owner timely written notice stating the date, circumstances, and source of the order and that Job Order Contractor regards the order as a change order.

10.3. **Contract Adjustments.** Except as provided in this § 10, no order, statement, or conduct of Owner shall be treated as a change under this § 10 or entitle Job Order Contractor to an equitable adjustment hereunder.

10.4. **Modification of the Job Order.** If any change under this § 10 causes an increase or decrease in Job Order Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Owner shall negotiate an equitable adjustment and modify the Job Order in writing.

10.5. **Job Order Contractor Proposal.** Job Order Contractor must submit any proposal under this § 10 within thirty (30) calendar days after:

10.5.1. Receipt of a written change order under § 10.1 above; or

10.5.2. The furnishing of a written notice under § 10.2 above by submitting to Owner a written statement describing the general nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under § 10.2 above.

10.6. **Final Payment Limitation.** No proposal by Job Order Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

10.7. **Job Order Contractor Extension Justification.** Job Order Contractor shall furnish to the Owner a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

**10.8. Job Order Contractor Price Breakdown Structure.** Job Order Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by Owner and the pricing matrix as required in the awarded contract.

**11. INSURANCE & BONDS**

**11.1. Job Order Contractor Insurance.** Job Order Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Job Order Contractor and Owner from claims which may arise out of or result from Job Order Contractor's operations whether such operations are performed by Job Order Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

**11.1.1. WORKERS' COMPENSATION INSURANCE** providing statutory benefits in accordance with the laws of the State of Arizona or any Federal statutes as may be applicable to the Work being performed under this Contract.

**11.1.2. EMPLOYER'S LIABILITY INSURANCE** with limits of liability not less than: \$1,000,000 Each Accident; \$1,000,000 Each Employee for Disease; and \$1,000,000 Policy Limit for Disease.

**11.1.3. COMMERCIAL GENERAL LIABILITY INSURANCE** including Products/Completed Operations and Contractual Liability with limits of liability not less than: \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate; and \$2,000,000 Each Occurrence.

**11.1.4. AUTOMOBILE LIABILITY INSURANCE** covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Contract with limits of liability not less than: \$1,000,000 Each Person for Bodily Injury; \$1,000,000 Each Accident for Bodily Injury; and \$1,000,000 Each Occurrence for Property Damage.

**11.2. Owner as Additional Insured.** The policies providing Commercial General Liability and Automobile Liability insurance as required in § 11.1 shall be endorsed to name Owner as Additional Insured. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.

**11.3. Policy Endorsement.** All policies providing Job Order Contractor's insurance as required in § 11.1 above shall be endorsed to provide the following:

**11.3.1.** Thirty days written notice of cancellation or non-renewal given to Owner at the address designated in § 16.2.

**11.3.2.** Waiver of subrogation in favor of Owner.

**11.4. Limits of Liability.** The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

**11.5. Certificate of Insurance.** Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this

agreement. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies).

**11.6. Subcontractor Insurance.** Job Order Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Job Order Contractor shall deem appropriate and adequate for the Work being performed. Job Order Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

**11.7. Bonds.** If required by Owner, Job Order Contractor shall furnish Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work, in a penal sum equal to the aggregate price of all Job Orders issued to the Job Order Contractor. The Performance and Payment Bonds must be submitted to Owner within ten (10) calendar days after issuance of a Job Order.

**11.8. Notice to Proceed.** Notice to Proceed will not be issued until properly executed bonds are received and accepted by Owner. A separate Notice to Proceed will be issued for each Job Order. The Notice to Proceed shall stipulate the actual contract start date, the contract duration and the contract completion date. The time required for the Contractor to obtain permits, licenses and easements shall be included in the contract duration and shall not be justification for a delay claim by the Contractor. The time required for the Contractor to prepare, transmit and obtain approval of applicable submittals shall be included in the contract duration and shall not be justification for a delay claim by the Contractor. No work shall be started until after all required permits, licenses, and easements have been obtained. No work shall be started until all applicable submittals have been submitted and returned approved by the Owner's Representative. The Contractor shall notify the City of Peoria's project manager or engineer at least seventy-two (72) hours before the following events:

**11.8.1** The start of construction in order to arrange for inspection.

**11.8.2** Shutdown of City water, sewer, drainage, irrigation and traffic control facility.

**11.8.3** Shutdown of existing water wells and booster pumps. Shutdown shall not exceed seventy-two (72) hours for any installation. Only one installation may be shutdown at any time.

**11.8.4** Coordination of all draining and filling of water lines and irrigation laterals and all operations of existing valves or gages with the project manager.

**11.8.5** Start-up or testing of any water well or booster pump to be connected to any part of the existing City water system. This includes operation of existing valves necessary to accommodate the water.

**12. INDEMNIFICATION.** To the fullest extent permitted by law, the Job Order Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Job Order Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Job Order Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury,

sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Job Order Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Job Order Contractor may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

**13. DISPUTES.**

**13.1. Party Cooperation.** The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Job Order Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**13.2. Field Level Resolution.** Job Order Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein.

**13.3. Job Order Contractor Performance.** The Job Order Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties.

**13.4. Partnering.** If requested and mutually agreed upon, the Owner and Job Order Contractor will share in the expense of an initial facilitated partnering workshop, followed up by periodic refresher meetings at mutually agreed times. The goal of the workshop will be to identify common goals, common interests, lines of communication, and a commitment to cooperative problem solving.

**13.5. Owner's Representative.** Owner designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

City of Peoria, Materials Management  
Mr. Herman Koebergen, Materials Manager  
8401 W. Monroe, Annex  
Peoria, AZ 85345

**13.6. Job Order Contractor's Representative.** Job Order Contractor designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract. (Identify individual's name, title, address and telephone numbers)

*KEVIN FELIX, PROJECT MANAGER*  
*309 E. 10<sup>th</sup> DRIVE, MESA AZ 85210*  
*480-464-6011*  
*EMAIL: KEVIN.F@felixconstruction.com*

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**13.7. Owner's Resolution.** Any dispute which is not disposed of by agreement will be decided by the Owner, who will reduce its decision to writing and mail or otherwise furnish a copy thereof to the Job Order Contractor. Any dispute not finally resolved under this § 13 may be brought before the state courts of the State of Arizona and adjudicated in accordance with the laws of Arizona.

#### **14. TERMINATION AND DEFAULT**

**14.1. Termination for Convenience.** Owner may terminate performance of the Work under this Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.

**14.2. Notice of Termination.** After receipt of a Notice of Termination, and except as directed by Owner, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this § 14:

**14.2.1.** Stop work as specified in the notice;

**14.2.2.** Place no further subcontracts or orders (referred to as subcontracts in this § 14) for materials, services or facilities, except as necessary to complete any Work not terminated;

**14.2.3.** Assign to Owner, if directed by Owner, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this § 14;

**14.2.4.** As directed by Owner, transfer title and deliver to Owner:

**14.2.4.1.** The fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced or acquired for the Work terminated;

**14.2.4.2.** The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;

**14.2.5.** Complete performance of the Work not terminated;

**14.2.6.** Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Job Order Contractor and in which Owner has or may acquire an interest; and

**14.2.7.** Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in § 14.2.3 above; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.

**14.3. Final Termination Settlement Proposal.** After termination, Job Order Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification

prescribed by Owner. Job Order Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

**14.4. Owner Payment.** Job Order Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount will include a reasonable allowance for profit on work done. The Contract shall be amended, and Job Order Contractor paid the agreed amount.

**14.4.1.** If Job Order Contractor and Owner fail to agree on the whole amount to be paid Job Order Contractor because of the termination of work. Owner shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under § 14.4 above:

**14.4.1.1.** For Work performed before the effective date of termination, the total (without duplication of any items) of:

**14.4.1.1.1.** The cost of this Work;

**14.4.1.1.2.** The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in § 14.4.1.1.1. above; and

**14.4.1.1.3.** A markup, including overhead and profit, on § 14.4.1.1.1. above as is determined for pricing changes.

**14.4.1.2.** The reasonable costs of settlement of the Work terminated, including:

**14.4.1.2.1.** Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

**14.4.1.2.2.** The termination and settlement of subcontracts (excluding the amounts of such settlements); and

**14.4.1.2.3.** Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

**14.5. Destroyed, Lost, Stolen or Damaged Property.** Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Job Order Contractor under Subparagraph 14.4.1 above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.

**14.6. Amount Due Job Order Contractor.** In arriving at the amount due Job Order Contractor under this § 14, there shall be deducted:

**14.6.1.** All unliquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;

**14.6.2.** Any claim which Owner has against Job Order Contractor under the Contract; and

**14.6.3.** The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this § 14 and not recovered by or credited to Owner.

**14.7. Partial Termination.** If the termination is partial, Job Order Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of any Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this § 14 shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of any Job Order, if Owner believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.

**14.8. Excess Payments.** If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Owner upon demand.

**14.9. Job Order Contractor Records.** Unless otherwise provided in this Contract or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Owner, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**14.10. Default.** If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Owner may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon thirty (30) days written notice to the Job Order Contractor. In this event, Owner may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

**14.11. Job Order Contractor's Right to Proceed.** Job Order Contractor's right to proceed shall not be terminated under this § 14, if:

**14.11.1.** The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Job Order Contractor. Examples of such causes include: acts of God or of the public enemy, acts of Owner in its Contractual capacity, acts of another contractor in the performance of a Contract with Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the subcontractors or suppliers; and

**14.11.2.** Job Order Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal and review under § 13.

**14.12. Owner's Right to Terminate.** The rights and remedies of Owner in this § 14 are in addition to any other rights and remedies provided by law or under this Contract.

**14.13. Owner and Job Order Contractor Rights.** If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.

**14.14. Liquidated Damages.** Liquidated Damages shall be assessed for each calendar of delay. Liquidated Damages shall be in the amount per MAG Specs., Section 108.9) per day for each calendar day of delay. If the contract is not terminated, the contractor shall continue performance and be liable to the Owner for the liquidated damages until the products are delivered or services performed. In the event the City exercises its right of termination, the contractor shall be liable to the Owner for any excess costs, and in addition, for liquidated damages until such time the Owner may reasonably obtain delivery or performance of similar supplies or services.

**14.15. Immigration Act.** Contractor understands and acknowledges the applicability to Contractor of the Immigration Reform and Control Act of 1986 (IRCA). Contractor agrees to comply with the IRCA in performing under this contract and to permit City inspection of personnel records to verify such compliance.

## **15. WARRANTY OF CONSTRUCTION**

**15.1. Applicable Warranties.** In addition to any other warranties in any Job Orders, Job Order Contractor warrants, except as provided in § 15.10, that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Job Order Contractor or any of its subcontractors or suppliers at any tier.

**15.2. Warranty Duration.** This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Owner takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

**15.3. Job Order Contractor Corrective Work.** Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Owner's real or personal property, when that damage is the result of:

**15.3.1.** Job Order Contractor's failure to conform to requirements; or

**15.3.2.** Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.

**15.4. Job Order Contractor Restoration.** Job Order Contractor shall restore any work damaged in fulfilling the terms and conditions of this § 15. Job Order Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

**15.5. Owner Notification.** Owner shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

**15.6. Failure to Correct Work.** If Job Order Contractor fails to remedy any failure, defect, or damage within ten (10) days after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Job Order Contractor's expense.

**15.7. Subcontractor and Supplier Warranties.** With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:

15.7.1. Obtain all warranties required by the Job Order;

15.7.2. Require all warranties to be executed, in writing, for the benefit of Owner; and

15.7.3. Enforce all warranties for the benefit of Owner.

**15.8. Owner Remedy.** In the event Job Order Contractor's warranty under § 15.2 has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

**15.9. Owner Furnished Material or Design.** Unless a defect is caused by the negligence of Job Order Contractor or subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage that result from any defect in Owner-furnished material or design.

**15.10. Pre-Existing Work.** Job Order Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.

**15.11. Owner's Rights.** This warranty shall not limit Owner's rights under § 8 of this Contract with respect to latent defects, gross mistakes, or fraud.

## **16. STANDARD TERMS AND CONDITIONS**

**16.1. Contract Order of Precedence.** In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

16.1.1. Contract Modifications, if any;

16.1.2. This Contract, including Attachments;

16.1.3. Job Orders;

16.1.4. Drawings; and

16.1.5. Specifications.

**16.2. Certification.** By signature in the Offer section of the Offer and Contract Award page the Job Order Contractor certifies:

16.2.1. The submission of the offer did not involve collusion or other anti-competitive practices.

16.2.2. The Job Order Contractor shall not discriminate against any employee or applicant for employment.

16.2.3. The Job Order Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure

to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

**16.2.4.** The Job Order Contractor is licensed to perform the Work pursuant to Arizona Revised Statutes Title 32, Chapter 10.

**16.3. Bribes and Kick-Backs.** The Job Order Contractor shall not by any means:

**16.3.1.** Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

**16.3.2.** Confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan subscription, advance, deposit of money, services or anything of value, present or promised;

**16.3.3.** Offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or,

**16.3.4.** Without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Job Order Contractor has a direct or indirect proprietary or other pecuniary interest.

**16.4. Applicable Law.** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

**16.4.1.** Job Order Contractor warrants, for the term of this agreement and for six months thereafter, that it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

**16.4.2.** This contract shall be governed by the Owner, City and Job Order Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the Owner. This contract shall be governed by the laws of the State of Arizona. Any lawsuit pertaining to this contract may be brought only in courts in the State of Arizona.

**16.4.3.** This contract is subject to the provisions of ARS § 38-511; the Owner may cancel this contract without penalty or further obligations by the Owner or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Owner or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

**16.5. Legal Remedies.** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.

**16.6. Contract.** The contract between the Owner and the Job Order Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of

work, attachments, price sheet(s) and any amendments thereto, and (2) the offer submitted by the Job Order Contractor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the Owner reserves the right to clarify, in writing, any contractual terms with the concurrence of the Job Order Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.

**16.7. Contract Amendments.** This contract may be modified only by a written Contract Amendment signed by persons duly authorized to enter into contracts on behalf of the Owner and the Job Order Contractor.

**16.8. Contract Applicability.** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the Owner are not applicable to this Solicitation or any resultant contract.

**16.9. Severability.** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

**16.10. Relationship to Parties.** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Job Order Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Job Order Contractor should make arrangements to directly pay such expenses, if any.

**16.11. Assignment-Delegation.** No right or interest in this contract nor delegation of any duty of Job Order Contractor shall be made without prior written permission of the Owner.

**16.12. Job Order Contractor/Supplier Contract.** The Job Order Contractor shall enter into written contracts with its subcontractor(s) and supplier(s), if any, and those written contracts shall be consistent with this Contract for Construction. It is the intent of the Owner and the Job Order Contractor that the obligations of the Job Order Contractor's subcontractor(s) and supplier(s), if any, inure to the benefit of the Owner and the Job Order Contractor, and that the Owner be a third-party beneficiary of the Job Order Contractor's agreements with its subcontractor(s) and supplier(s).

**16.12.1.** The Job Order Contractor shall make available to each subcontractor and supplier, if any, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract for Construction, including those portions of the Construction documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractor(s) and supplier(s).

**16.12.2.** The Job Order Contractor shall engage each of its subcontractor(s) and supplier(s) with written contracts which preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Job Order Contractor's agreements with its subcontractor(s) and supplier(s) shall require that in the event of default under, or termination of,

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this Contract for Construction, and upon request of the Owner, the Job Order Contractor's subcontractor(s) and supplier(s) will perform services for the Owner.

**16.12.3.** The Job Order Contractor shall include in its agreements with its subcontractor(s) and supplier(s) a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Construction that are included by reference in its written contract with the Job Order Contractor, and that it will abide by those terms, conditions and requirements.

**16.13. Rights and Remedies.** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the Owner of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the Owner to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the Owner's acceptance of and payment for materials or services, shall not release the Job Order Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the Owner to insist upon the strict performance of the Contract.

**16.14. Overcharges By Antitrust Violations.** The Owner maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Job Order Contractor hereby assigns to the Owner any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

**16.15. Force Majeure.** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure.

**16.15.1.** The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

**16.15.2.** Force majeure shall not include the following occurrences: late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition; or any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand

delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

**16.16. Right To Assurance.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**16.17. Right To Audit Records.** The Owner may, at reasonable times and places, audit the books and records of any Job Order Contractor as related to any contract held with the Owner.

**16.18. Warranties.** Job Order Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Job Order Contractor's response, the Owner is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the Owner shall not alter or affect the obligations of the Job Order Contractor or the rights of the Owner under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

**16.19. Inspection.** All material and/or services are subject to inspection and acceptance by the Owner. Materials and/or services failing to conform to the specifications of this Contract will be held at Job Order Contractor's risk and may be returned to the Job Order Contractor. If so returned, all costs are the responsibility of the Job Order Contractor. The Owner may elect to do any or all of the following:

- 16.19.1. Waive the non-conformance.
- 16.19.2. Stop the work immediately.
- 16.19.3. Bring material into compliance.
- 16.19.4. This shall be accomplished by a written determination from the Owner.

**16.20. Title and Risk of Loss.** The title and risk of loss of material and/or service shall not pass to the Owner until the Owner actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

**16.21. No Replacement of Defective Tender.** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.

**16.22. Shipment Under Reservation Prohibited.** Job Order Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

**16.23. Liens.** All materials, service or construction shall be free of all liens, and if the Owner requests, a formal release of all liens shall be delivered to the Owner.

**16.24. Licenses.** shall maintain in current status, all Federal, State and Local licenses and created under this contract are the property of the Owner and shall not be used or released by the Job Order Contractor or any other person except with the prior written permission of the Owner.

**16.25. Patents and Copyrights.** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Owner and shall not be used or released by the Job Order Contractor or any other person except with the prior written permission of the Owner.

**16.26. Cost of Bid/Proposal Preparation.** The Owner shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

**16.27. Public Records.** All offers submitted in response to this solicitation shall become the property of the Owner and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Owner's Procurement Code.

**16.28. Advertising.** Job Order Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the Owner.

**16.29. Delivery Orders.** The Owner shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award

**16.30. Funding.** Any contract entered into by the Owner of Peoria is subject to funding availability. Fiscal years for the Owner of Peoria are July 1 to June 30. The Owner Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.

**16.31. A.R.S. Title 34 Provisions.**

**16.31.1.** The maximum dollar amount of an individual job order shall be one million dollars (\$3,000,000) or such higher or lower amount prescribed by the Owner in an action notice pursuant to A.R.S. title 38, chapter 3, article 3.1 or a rule adopted by the Owner as the maximum amount of an individual job order. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

**16.31.2.** If the Job Order Contractor subcontracts or intends to subcontract part or all of the work under a job order and if this contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order, then:

**16.31.2.1.** The Job Order Contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the Job Order Contractor to do all or part of the work under one or more job orders:

**16.31.2.1.1.** A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

**16.31.2.1.2.** A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

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**16.31.2.2.** If not previously delivered to the subcontractor, the Job Order Contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

**16.31.2.2.1.** A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

**16.31.2.2.2.** The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

**16.31.2.2.3.** The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

**16.31.3.** The Owner will include the full street or physical address of each separate location at which the construction will be performed for each individual Job Order. The Job Order Contractor (and on behalf of each subcontractor at any level) hereby agrees to include in each of its subcontracts the same address information. The Job Order Contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

Fees to be added to JOC individual Job Order Cost															
Description	0 to 25,000			25,001 to 50,000			100,001 to 250,000			250,001 to 500,000			Over 500,000		
	Overh'd	Profit	Fee	Overh'd	Profit	Fee	Overh'd	Profit	Fee	Overh'd	Profit	Fee	Overh'd	Profit	Fee
Labor rates *	4.7%	10.0%	14.7%	4.7%	10.0%	14.7%	4.7%	10.0%	14.7%	4.7%	10.0%	14.7%	4.7%	10.0%	14.7%
Equipment rates **	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%
Rental Equipment	4.7%	10.0%	14.7%	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%	4.7%	5.0%	9.7%	4.7%	5.0%	9.7%
Material cost	4.7%	10.0%	14.7%	4.7%	7.5%	12.2%	4.7%	7.5%	12.2%	4.7%	5.0%	9.7%	4.7%	5.0%	9.7%
Subcontractor cost	4.7%	5.0%	9.7%	4.7%	4.0%	8.7%	4.7%	4.0%	8.7%	4.7%	3.0%	7.7%	4.7%	3.0%	7.7%
Engineer services	4.7%	?	?	4.7%	?	?	4.7%	?	?	4.7%	?	?	4.7%	?	?
Taxes	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Bonds	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Permits	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

\* Rates = Labor hourly cost + labor burden (does not include overhead or profit)

\*\* Rates = Equipment ownership cost including fuel and insurance (does not include operator, overhead, or profit)

**Job Order Sample Cost/Pricing Matrix**

**Amount**

**% of Total**

**G&A + Fee**

<b>Direct Cost of the Work</b>			
Materials	190,000	19.00%	4.7% + 5%
Labor	110,000	11.00%	4.7% + 10%
Equipment	55,000	5.50%	4.7% + 7.5%
Other Direct Job Costs	65,000	6.50%	4.7% + 3%
Subcontractors	400,000	40.00%	4.7% + 3%
<b>Total Direct Cost Of the Work</b>	<b>820,000</b>	<b>82.00%</b>	
<b>Indirect Cost of the Work</b>			
General & Administrative Expense	38,540	3.85%	
Job Order Contractor's Fee (profit)	38,575	3.86%	
Payment and Performance Bonds	8,971	1.00%	
Insurance	8,971	0.90%	
Arizona/County/city Privilege Taxes	44,948	4.49%	
<b>Total Indirect Cost of the Work</b>	<b>140,000</b>	<b>14.00%</b>	
<b>Total Cost of the Work</b>	<b>960,000</b>	<b>96.00%</b>	
<b>Contingencies/Allowances</b>			
Contractor's Contingency/Allowance	20,000	2.00%	
Owner's Contingency/Allowances	20,000	2.00%	
<b>Total Contingencies/Allowances</b>	<b>40,000</b>	<b>4.00%</b>	
<b>Total Job Order Amount</b>	<b>1,000,000</b>	<b>100.00%</b>	

**ATTACHMENT "B"**  
**SCOPE OF SERVICES**

**1.0 GENERAL INFORMATION**

This is a fixed price, indefinite quantity type Contract for the performance of a broad range of construction, repair and maintenance work on an as-needed basis as may be required by Owner. The specific work requirements will be identified in Job Orders to be issued by Owner.

**2.0 DOCUMENTS**

2.1 The currently applicable pricing structure contains pricing information for the Work to be accomplished in the pricing matrix specified. The Pricing matrix can only be updated at time of yearly contract renewal by mutually agreeable change order. Previously issued Job Orders and changes will not be retroactively re-priced although any changes priced after receipt of an update will be priced by the updated version of the new pricing matrix.

2.2 The construction specifications in effect at Contract signing, and provided to the Job Order Contractor, shall be the specifications under this Contract.

**3.0 WORK AUTHORIZATION**

Any Work required under this Contract shall be authorized by issuance of formal, written Job Orders, as follows:

3.1 As the need exists (as determined by Owner) for performance under the terms of this Contract, Owner will notify Job Order Contractor of an existing requirement.

3.2 Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed, by:

3.2.1 Visiting the proposed site in the company of Owner, or;

3.2.2 Establishing contact with Owner to further define the scope of the requirement.

3.3 After mutual agreement on the scope of the individual requirement, Job Order Contractor shall then prepare a proposal for accomplishment of the task unless Job Order Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, Job Order Contractor will so notify Owner in a timely manner.

3.4 The price matrix shall serve as the basis for establishing the value of the Work to be performed.

3.5 Job Order Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.

3.6 Upon receipt of Job Order Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.

3.7 In the event Owner does not issue a Job Order after receipt of Job Order Contractor's proposal, Owner is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal, except as noted in § 4.8.

**A CON 23908**

#### 4.0 SCHEDULING OF WORK

4.1 For each Job Order, Owner will issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Job Order Contractor. Job Order Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Job Order Contractor considers the Work complete and ready for its intended use, Job Order Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be Punch List Prepared as defined in 1.7, Owner will provide Contractor with a list of items to be completed or corrected prior to final payment for the Job Order. Job Order Contractor shall proceed promptly to complete and correct items on the list.

4.2 Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.

4.3 Furniture and portable office equipment in the immediate work area will be moved by Job Order Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Job Order Contractor for any such transportation and storage costs incurred.

4.4 Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Job Order Contractor at no cost to Owner.

4.5 Job Order Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for approval.

#### 5.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

Job Order Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's inspectors.

#### 6.0 DESIGN

Job Order Contractor's duties under the Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner, with reimbursement included as part of the Job Order Contractor's proposal.

#### 7.0 TEMPORARY SANITATION FACILITIES

The Contractor shall provide ample toilet facilities with proper enclosures for the use of workmen employed on the work site. Toilet facilities shall be installed and maintained in conformity with all applicable state and local laws, codes, regulations and ordinances. They shall be properly lit and ventilated, and kept clean at all times.

Adequate and satisfactory drinking water shall be provided at all times and under no circumstances and under no conditions will the use of common cups be permitted. The Contractor must supply sanitary drinking cups for the benefit of all employees.

#### 7.1 DUST CONTROL AND WATER

The dust control measures shall be in accordance with the requirements of the "*Maricopa County Health Department Air Pollution Control Regulations,*" namely Regulation II, Rule 21, subparagraph C and Regulation III, Rule 310 shall be rigidly observed and enforced. Water or other approved dust palliative in sufficient quantities shall be applied during all phases of construction involving open earthwork to prevent unnecessary discharge of dust and dirt into the air. The Contractor shall be responsible for compliance with these regulations. A Notice to Proceed will not be issued until the City of Peoria has received a copy of the Contractor's Dust Control Permit and Plan.

The Contractor shall be required to obtain the necessary permit and all pertinent information from the Maricopa County Air Pollution Control Bureau, 2406 S. 24th Street #E-214, Phoenix, Arizona. (602) 506-6700 extension 372.

The Contractor shall keep suitable equipment on hand at the job site for maintaining dust control on the project streets, and shall employ sufficient labor, materials and equipment for that purpose at all times during the project to the satisfaction of the City Engineer.

Watering shall conform to the provisions of Section 225 of the MAG Standard Specifications. The cost of watering will be included in the price bid for the construction operation to which such watering is incidental or appurtenant.

Installation and removal of fire hydrant meters should be scheduled at least forty-eight (48) hours in advance through the City of Peoria Utilities Division at (623) 773-7160. A \$1,000 deposit is required for each meter. An additional \$28.00 service fee is also required. The cost of the water is at the prevailing rate.

#### 7.2 ELECTRICITY

Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor, and costs included in the Job Order Proposal, so as to leave the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

#### 8.0 WORK BY OWNER

Owner reserves the right to undertake or award Contracts for the performance of the same or similar type work contemplated herein, and to do so will not breach or otherwise violate the Contract.

A CON 239080



# REQUEST FOR QUALIFICATIONS

P08-0047

## Materials Management Procurement

8314 West Cinnabar Street  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

### PROPOSAL FORM

This form must be completed and stapled to the Value Added Plan, and the Subcontractor Selection Plan as part of your submittal.

Name of JOC Firm (Contractor):  
Name of Contract Manager:

Felix Construction Company  
Kevin Felix (PM), Steve Stayer (SS),  
(PM) Dana Watts (PM)

#### PPI Checklist:

- All reference lists have been submitted to the city.
- Surveys have been distributed to the past clients on the reference lists.
- The surveys have been completed and turned in to the City by the past clients.

#### VA Checklist:

- The Value Added Plan is stapled to this form.
- The Value Added Plan is 2 pages or less and is in the required format.
- The Value Added Plan does NOT contain any names, past projects, or information that may identify the contractor or critical team members.

#### Subcontractor Selection Plan Checklist:

- The Subcontractor Selection Plan is stapled to this form.
- The Subcontractor Selection Plan is no longer than 1 page.
- The Subcontractor Selection Plan does NOT contain any names, past projects, or information that may identify the contractor or critical team members.

Individual project bonding capacity:	<u>\$15,000,000</u>
Total bonding capacity:	<u>\$60,000,000</u>
Amount of bonded contracts currently in process:	<u>\$23,800,000</u>

The Value Added Plan & Sub Contractors Plan should be attached to this form. The Value Added Plan must NOT contain any information that may identify the Firm or critical team members.

Felix Construction Company  
Name of Company

Donald Felix, President  
Printed Name of Firm Representative

Signature of Firm Representative

309 E. 10th Dr.  
Street Address

Mesa, AZ 85210-8706  
City / State / Zip

480-464-0011      480-464-0078      03 Jan 08  
Phone                      Fax                      Date

**A CON 23908**



# REQUEST FOR QUALIFICATIONS

Materials Management  
 Procurement  
 8314 W. Cinnabar St.  
 Peoria, AZ 85345-6560  
 Phone (623) 773-7115  
 Fax (623) 773-7118

P08-0047

## Value Added Options

Risk 1:	This JOC project will include a wide range of water and wastewater facility work. The City now has only very general descriptions of the job orders. A JOC Firm inexperienced with multiple disciplines might not meet the City's cost or schedule expectations.		
Value Added:	The project requires a JOC Firm to be familiar with cost, schedule, constructability, and construction for multiple disciplines - civil; structural; mechanical; electrical, instrumentation, and controls (E/I&C); etc. Contractor's focus for its entire 20-year history has been water and wastewater work. We already have, in-house, the experience to efficiently manage and build work in these and other disciplines. We have an A- General Engineering license for civil, structural, and mechanical, an L-11 Electrical license for E/I&C, a B-01 General Commercial license for buildings, and a Well Driller's license. We have two licensed Professional Engineers and one certified Construction Manager on staff. We specialize in Alternative Delivery Projects, and are very familiar with the JOC process. We regularly self-perform structural concrete, mechanical piping and equipment, electrical conduit and gear, and instrumentation and controls work. Again, all of this experience is in-house.		
Impact Cost (%):	Up to -3%	Impact Time (Days):	0
Risk 2:	This JOC project could include electrical, instrumentation, and controls (E/I&C) work, often a source of schedule variance. E/I&C standards are often evolving, making systems integration difficult during both design and construction.		
Value Added:	Contractor has an in-house E/I&C Group. This gives the project an added element of cost and schedule control. We do not have to employ a lower-tier subcontractor for electrical conduit and gear, instrumentation and controls, remote telemetry unit, SCADA, or security upgrades work. Our E/I&C Group has an Underwriter's Laboratory 508A Control Panels certification. With this capability and expertise, we can quickly respond to evolving design and construction standards, without delay to the project.		
Impact Cost (%):	Up to -3%	Impact Time (Days):	Up to -5 Working Days
Risk 3:	The City probably will have only verbal descriptions or sketches for some job orders. The City could be at risk for poor conceptual estimating.		
Value Added:	The project requires a JOC Firm to estimate costs quickly and efficiently, usually with only conceptual information. Contractor manages and builds many types of water and wastewater projects every day. We have proprietary estimating programs and forms already set up; these can be adapted to the current project. Further, we are used to estimating with limited information. Our goal is to have accurate and fair cost estimates, with no upwards fluctuations. Since we regularly self-perform structural concrete, mechanical piping and equipment, electrical conduit and gear, and instrumentation and controls, we have up-to-date labor, equipment, and materials costs. Additionally, we have a database of and current working relationships with over 250 material suppliers, over 150 equipment providers, and over 100 subcontractors. All of these are high quality, and can give us cost estimating advice in their specialties.		
Impact Cost (%):	Up to -1%	Impact Time (Days):	0

A CON 23908E



# REQUEST FOR QUALIFICATIONS

P08-0047

**Materials Management  
Procurement**  
8314 W. Cinnabar St.  
Peoria, AZ 85345-6560  
Phone (623) 773-7115  
Fax (623) 773-7118

Risk 4:	The job order dollar amounts will vary - some will be large, some will be small. An uncommitted JOC Firm might pay less attention to the small orders. The City then would be at risk that problems were not identified and solved.		
Value Added:	The project requires a JOC Firm to be willing and able to commit problem-solving resources to all job orders, regardless of size. Contractor's entire approach to project management is to anticipate a project's problems, and to offer cost-effective and timely solutions. This means our project managers (PMs) are close to the project details, and actually support our field work. We have more PMs per revenue dollar volume than other companies. Our PMs work hard at understanding every available construction detail before we start building. The City will get the same high level of performance from Contractor whether the job orders are large or small. As further evidence of owner satisfaction with our project management approach, in our 20-year history we never have had a contract or subcontract terminated, we never have had a claim filed against us, and we never have filed a claim against anyone.		
Impact Cost (%):	Up to -1%	Impact Time (Days):	0

Risk 5:	This JOC project will include modifying existing water and wastewater facilities. Accurate underground utility locations, and control drawings, will be required before construction. Record drawings often are unavailable or inadequate.		
Value Added:	If underground utility record drawings are unavailable, we will recommend utility locating (vacuum excavating) at potential conflict locations. We have working relationships with several expert utility locating companies. If accurate controls drawings are unavailable, we are able to develop them.		
Impact Cost (%):	\$1 spent up-front typically saves \$3-4 spent later	Impact Time (Days):	Up to -5 Working Days

Risk 6:	Operations at existing facilities must be maintained during construction.		
Value Added:	Contractor already has a proprietary and proven Maintenance of Plant Operations (MOPO) standard plan which can be adapted to the current project. We will coordinate with the City and other stakeholders to schedule our work so that operations are maintained. Often such scheduling requires off-hours or weekend work. We will handle this as just another part of the project.		
Impact Cost (%):	Up to +2%	Impact Time (Days):	Up to -4 Working Days

Risk 7:	Projects could require building safety permits. Plan reviews could be on a project's critical path, but are controlled by another City department.		
Value Added:	City will state when any project must be completed. Project Team will meet with City's Building Safety Dept. and confirm their review and permit schedule. Contractor will include information on project schedule and updates. If the Building Safety Dept.'s schedule varies, we will be prepared to "accelerate" any necessary design or construction revisions in response.		
Impact Cost (%):	Up to +3%	Impact Time (Days):	Up to -10 Working Days

Risk 8:	The City already has clear expectations of this JOC project and the individual job orders. Contractor may not fully understand these. If SAVE members become involved on the project, there is a possibility of more entities and more expectations.		
Value Added:	Contractor will recommend scope / kickoff meetings before each job order. We will make sure that we fully understand the City's or the SAVE member's budget, schedule, quality, and safety expectations. These meetings are to us just good management practice. We do not expect that they will add cost or time to the job orders.		
Impact Cost (%):	0	Impact Time (Days):	0

**A CON 23908**

## Subcontractor Selection Plan

1. General.
  - a. Contractor will select major subcontractors based on qualifications only, or a combination of qualifications and price, but not on price alone. This is according to ARS 34-603 and ARS 41-2578.
  - b. Contractor also will consider these important subcontractor selection factors:
    - 1) Owner's history, good or bad, with potential subcontractors.
    - 2) Owner's goals for disadvantaged business enterprise (DBE) utilization.
    - 3) Project benefits from early involvement by Design Assist subcontractors.
    - 4) Project requirements for Contractor to self-perform a minimum percentage of the construction work.
  - c. Contractor will include this subcontractor selection plan, and the results from it, into the project's Construction Management Plan.
2. Selection on Qualifications and Price.
  - a. This is the typical selection process.
  - b. Determine what bid packages to issue. Break project into packages that give the Owner and the project the best cost and time values.
  - c. Contact subcontractors who work regularly in the water / wastewater industry. Actively solicit DBEs.
    - 1) Owner and Contractor jointly set disparity goals if any for the project.
  - d. Subcontractors complete prequalification forms. We have proprietary forms on file.
    - 1) Information requested is company identification, company background, individual and company experience, company financial, company insurance, company safety, and miscellaneous. The miscellaneous section can be tailored to a particular project.
  - e. Evaluate subcontractor prequalification forms. We have proprietary forms on file.
    - 1) Evaluation categories and scoring are stated on the pre-qualification form.
    - 2) We look closely at work backlog and experience modification rating.
  - f. Review qualified subcontractors with the Owner. Get Owner approval.
    - 1) Solicit enough potential subcontractors per bid package to insure receiving at least 3 bids per package.
  - g. Provide qualified subcontractors with preliminary scopes of work. Get their comments and questions.
  - h. Distribute bid packages to qualified subcontractors.
    - 1) A well-prepared scope of work is the key to receiving responsive, competitive bids. It eliminates the need to add money to offset ambiguity, prevents duplications between bids for sub-disciplines, allows bid evaluations on an equal basis, reduces contingencies, and reduces the likelihood of change orders.
  - i. Receive and open bids, with the Owner as a witness.
  - j. Evaluate bids. Conduct post-bid interviews if necessary. We have proprietary forms for both on file.
    - 1) Evaluation categories and scoring are stated in the bid package.
  - k. Report to Owner on bidding process. Make recommendations on selected subcontractors. Get Owner approval.
  - l. Award subcontracts.
3. Selection on Qualifications Only.
  - a. Use this selection process if:
    - 1) Design Assist advice is needed during the preconstruction phase. Under Design Assist, major or specialist subcontractors or suppliers are selected early in the preconstruction phase so that they can work with the Project Team on constructability review. This allows increased construction planning, and allows reduced requests for information or requests for change orders.
    - 2) Proprietary services or products are required (sole-source specification)
    - 3) A shorter project schedule is necessary. Selection on qualifications only often can speed up the bid packaging, bidding, and GMP process.
  - b. Propose to Owner to select on qualifications only. Get Owner approval. If no approval, go to Selection on Qualifications and Price above.
    - 1) Normally, Contractor intends that any subcontractor or supplier selected on qualifications only for the preconstruction phase will also be employed for the construction phase, also on qualifications only.
    - 2) Such carry-over from phase to phase does not mean that the subcontractor or supplier is not required to provide detailed cost estimates for his work to the Contractor for review.
  - c. Determine what work packages to issue. Break project into packages that give the Owner and the project the best cost and time values.
  - d. Contact subcontractors who work regularly in the water / wastewater industry. Actively solicit DBEs.

- 1) Owner and Contractor jointly set disparity goals if any for the project.
- e. Subcontractors complete prequalification forms. We have proprietary forms on file.
  - 1) Information requested is company identification, company background, individual and company experience, company financial, company insurance, company safety, and miscellaneous. The miscellaneous section can be tailored to a particular project.
  - 2) Qualifications include subcontractor's abilities in conceptual cost estimating, alternative systems evaluation, and value engineering.
- f. Evaluate subcontractor prequalification forms. We have proprietary forms on file.
  - 1) Evaluation categories and scoring are stated on the pre-qualification form.
  - 2) We look closely at the subcontractor's key person and overall company experience with a particular part of the project.
- g. Review qualified subcontractors with the Owner. Get Owner approval.
- h. Provide qualified subcontractors with preliminary scopes of work. Get their comments and questions.
- i. Distribute work packages to qualified subcontractors.
  - 1) Subcontractors or suppliers selected for Design Assist or proprietary services actually will help prepare these work packages. These packages will then be available for the Construction Management Plan, or if it becomes necessary to follow a competitive bidding process.
- j. Report on selection process to Owner. Make recommendations on selected subcontractors. Get Owner approval.
- k. Award subcontracts.
- 4. Summary.
  - a. Our subcontractor selection plan will give the Owner and this project the greatest opportunity to obtain the best cost and time value. It uses methods according to ARS, typical for the industry, and familiar to the Owner.

**DBE Outreach Plan**

- 1. General.
  - a. Contractor agrees to evaluate opportunities for the fair utilization of disadvantaged business enterprises (DBEs) during the construction phase of the project.
  - b. We will actively participate in any goal setting for the construction phase DBE participation. We will assist the Owner in setting realistic goals after the Project Team develops sufficient project detail to allow this.
  - c. We expect to meet any construction phase DBE goals that are set. If we cannot, then we will completely document our good faith efforts.
- 2. Specific.
  - a. We have, and will maintain, current records on companies that are DBE-certified by agencies such as the Arizona Department of Transportation, the Maricopa County Department of Transportation, and the City of Phoenix. "DBE" also includes minority owned business enterprises (MBEs), women owned business enterprises (WBEs), and small business enterprises (SBEs).
  - b. We have current working relationships with many local materials suppliers, equipment providers, and subcontractors. We know their capabilities and how to select the right company for this project.
  - c. We have, and we will maintain, current contacts with local community organizations that could advise us on DBE firms for participation in this project.
  - d. We will actively solicit DBE participation through telephone, fax, email, meetings, advertising, and other reasonable and available means. We will completely document this effort.
  - e. We will solicit DBE participation in sufficient time to allow DBEs to respond. We will provide specifications, drawings, and other project information in a timely manner.
  - f. We will identify portions of the construction that could be done by DBEs, to increase the likelihood that they will participate.
  - g. We will negotiate in good faith with interested DBEs. We will make decisions about their participation based on thorough investigations of their capabilities.
  - h. We will select DBEs that will perform significant portions of the construction with their own forces.
- 3. Summary.
  - a. We will use the outreach plan that we routinely use to meet DBE participation goals on ADOT, MCDOT, City of Phoenix, and other projects that are federally funded.

A CON 239085



# SOLICITATION AMENDMENT

## Materials Management Procurement

8314 West Cinnabar Avenue  
Peoria, Arizona 85345-6560  
Telephone: (623) 773-7115  
Fax: (623) 773-7118

Solicitation No: P08-0047  
Description: JOC for Water, Waste Water Treatment & Offsite Facilities Projects  
Amendment No: Amendment # One (1)  
Solicitation Due Date: January 3, 2008  
Solicitation Due Time: 5:00 PM Arizona time

Buyer: Peggy Ferrin, Ext. 7780

A signed copy of this Amendment shall be received by the City of Peoria, Materials Management no later than the Solicitation Due Date and Time.

### SECTION V – CRITICAL DATES

#### DELETE: Critical dates

Task	Date
Pre-submittal Conference	December 13, 2007
Firms Submit Reference Lists	December 19, 2007
Surveys Due & Submittals Due	January 03, 2008
Interview (short-listed firms/individuals only)	January 24, 2008
Identification of Potential Best Value	January 25, 2007
Negotiations	January 29, 2007
Pre-Project Meeting	February 7, 2007

#### REPLACE: Critical dates

Task	Date
Pre-submittal Conference	December 13, 2007
Firms Submit Reference Lists	December 19, 2007
Surveys Due & Submittals Due	January 03, 2008
Interview (short-listed firms/individuals only)	January 24, 2008
Identification of Potential Best Value	January 25, 2008
Negotiations	January 29, 2008

*All other provisions of this Solicitation shall remain in their entirety.*

Vendor hereby acknowledges receipt and agreement with the amendment.

 03 Jan 08  
\_\_\_\_\_  
Signature Date

Donald Felix, President

\_\_\_\_\_  
Typed Name and Title

Felix Construction Company

\_\_\_\_\_  
Company Name

309 E. 10th Dr.

\_\_\_\_\_  
Address

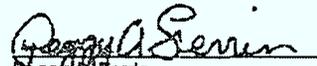
Mesa, AZ 85210-8706

\_\_\_\_\_  
City State Zip

The above referenced Solicitation Amendment is hereby Executed

November 29, 2007

at Peoria, Arizona

  
\_\_\_\_\_  
Peggy A. Ferrin  
Contract Officer



# SOLICITATION AMENDMENT

## Materials Management Procurement

8314 West Cinnabar Avenue  
Peoria, Arizona 85345-6560  
Telephone: (623) 773-7115  
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Solicitation Due Date: January 3, 2008  
Solicitation Due Time: 5:00 PM Arizona time

**Buyer: Peggy Ferrin, Ext. 7780**

**A signed copy of this Amendment shall be received by the City of Peoria, Materials Management no later than the Solicitation Due Date and Time.**

Pre-Project Meeting

February 7, 2008

*All other provisions of this Solicitation shall remain in their entirety.*

Vendor hereby acknowledges receipt and agreement with the amendment.

Signature

Date

Typed Name and Title

Company Name

Address

City

State

Zip

The above referenced Solicitation Amendment is hereby Executed

November 29, 2007

at Peoria, Arizona

  
Peggy Ferrin  
Contract Officer

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE  
04/08/2008

<b>PRODUCER</b> 877-945-7378  Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> Felix Construction Co. 309 E. 10th Drive Mesa, AZ 85210		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: Westfield Insurance Company INSURER B: National Union Fire Ins. Co. of Pittsburg INSURER C: INSURER D: INSURER E:	<b>NAIC#</b> 24112-001 19445-001

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CMM1618295	4/7/2008	4/7/2009	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
					MED EXP (Any one person)	\$ 10,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CMM1618295	4/7/2008	4/7/2009	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
B	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	BE7657639	4/7/2008	4/7/2009	EACH OCCURRENCE	\$ 1,000,000
					AGGREGATE	\$ 1,000,000
						\$
						\$
						\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 Umbrella/Excess Liability coverage is following form to all underlying policies, including Worker's Compensation.

It is agreed that City of Peoria is included as an Additional Insured as respects to General Liability as required by written contract.

With respects to General Liability policy, it is further agreed that such insurance as is afforded

### CERTIFICATE HOLDER

### CANCELLATION

City of Peoria Attn: Herman Kobergnen 8314 West Cinnabar Street Peoria, AZ 85435	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL <del>SEND BY MAIL</del> MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

<b>PRODUCER</b>  877-945-7378  Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC#</b>
<b>INSURED</b>  Felix Construction Co. 309 E. 10th Drive Mesa, AZ 85210	INSURERA: Westfield Insurance Company	24112-001
	INSURERB: National Union Fire Ins. Co. of Pittsburg	19445-001
	INSURERC:	NAIC#
	INSURERD:	NAIC#
INSURERE:		

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by the Additional Insured, if required by written contract.

It is understood and agreed that the company waives its right of subrogation against the Additional Insured which may arise by reason of a payment of claim under General Liability policy, if required by written contract.

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS - AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions; or
  2. The acts or omissions of those acting on your behalf;
- In the performance of your ongoing operations for the additional insured.
- A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.
- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**
- This insurance does not apply to:
1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
    - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - b. Supervisory, inspection, architectural or engineering activities.
  2. "Bodily injury" or "property damage" occurring after:
    - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
    - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER: CMM1618295  
INSURED: Felix Construction Co.

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

**SCHEDULE**

Name of Persons or Organization:

City of Peoria

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **OTHER INSURANCE CONDITION AMENDED**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

When required by written contract with any additional insured owner, lessee, or contractor to provide insurance on a primary and noncontributory basis, Condition 4, of Section IV - Commercial General Liability Conditions is deleted and replaced by the following:

#### **4. Other Insurance**

If other valid and collectible insurance is available for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### **a. Primary Insurance**

This insurance is primary and non-contributory except when b. below applies.

##### **b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work."
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos," or watercraft to the extent not subject

to Exclusion g. of Section I - Coverage A.

- (4) If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.



# CONTRACT AMENDMENT

Materials Management  
Procurement

8314 W. Cinnabar Ave.  
Peoria, AZ 85345  
Telephone: (623) 773-7115  
Fax: (623) 773-7118

Solicitation No: **P08-0047B** Page 1 of 3  
Description: JOC for Water,Waste Water Offsite Facilities  
Amendment No: One (1) Date: 12/15/2008

Buyer: Peggy Ferrin

Article 16, Contract Standard Terms and Conditions, is amended to reflect the following changes: Paragraph 16.4, Applicable Law; Paragraph 16.17, Right to Audit Records; and Paragraph 16.27, Public Record, are hereby deleted and replaced with the following:

**16.4 APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

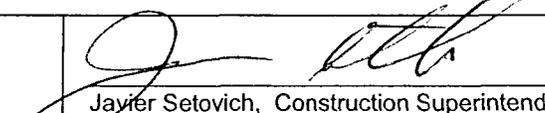
Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

	<u>12/24/08</u>	Donald Felix, President	Felix Construction Company
Signature	Date	Typed Name and Title	Company Name

<u>309 East 10<sup>th</sup> Drive</u>	<u>Mesa</u>	<u>AZ</u>	<u>85210</u>
Address	City	State	Zip Code

Attested by:

  
Mary Jo Kief, City Clerk

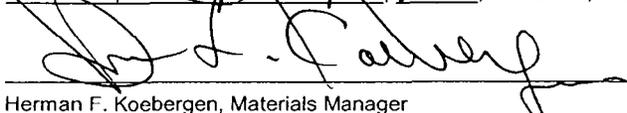
  
Javier Setovich, Construction Superintendent

  
Peggy Ferrin, OPPB, Contract Officer

Ellen Van Riper, Assistant City Attorney

  
Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed  
01/23/09, at Peoria, Arizona.

  
Herman F. Koebergen, Materials Manager



City Seal

CC Number

ACON23908A  
Contract Number:

Official File



# CONTRACT AMENDMENT

**Materials Management  
Procurement**

8314 W. Cinnabar Ave.

Peoria, AZ 85345

Telephone: (623) 773-7115

Fax: (623) 773-7118

Solicitation No: **P08-0047B** Page 1 of 3  
Description: JOC for Water,Waste Water Offsite Facilities  
Amendment No: One (1) Date: 12/15/2008

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Signature	Date	Donald Felix, President	Felix Construction Company	
309 East 10 <sup>th</sup> Drive		Mesa	AZ	85210
Address		City	State	Zip Code

Attested by:

Mary Jo Kief, City Clerk

CC Number

ACON23908A

Contract Number:

Official File

City Seal

(Rev 02/01/08)

Javier Setovich, Construction Superintendent

Peggy Ferrin, CPPB, Contract Officer

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

\_\_\_\_\_, \_\_\_\_\_, at Peoria, Arizona.

Herman F. Koebergen, Materials Manager



## CONTRACT AMENDMENT

Solicitation No: **P08-0047B** Page 2 of 3  
Description: JOC for Water, Waste Water Offsite Facilities  
Amendment No: One (1) Date: 12/15/2008

### Materials Management Procurement

8314 W. Cinnabar Ave.  
Peoria, AZ 85345  
Telephone: (623) 773-7115  
Fax: (623) 773-7118

Buyer: Peggy Ferrin

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.



## CONTRACT AMENDMENT

Solicitation No: **P08-0047B** Page 3 of 3  
Description: JOC for Water,Waste Water Offsite Facilities  
Amendment No: One (1) Date: 12/15/2008

Materials Management  
Procurement  
8314 W. Cinnabar Ave.  
Peoria, AZ 85345  
Telephone: (623) 773-7115  
Fax: (623) 773-7118

Buyer: Peggy Ferrin

**16.17 RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 16.4 above.

**16.27 PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 16.17 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 16.4 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.

All other provisions of the contract remain in their entirety.

EXHIBIT B  
TO  
PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
FELIX CONSTRUCTION COMPANY

[Project Scope/Quote Document]

See following page.

**Project Scope / Quote Document**

Project Location : Avondale, Az.  
Project Title : Avondale 10th Street SLS SCADA MW Tower Upgrades, includes work at Northside BPS.  
Date: April 10, 2009  
Attn: Mr. David Giannetto  
Estimator  
Felix Construction Company  
Phone: (480) 464-0011  
Cell 602-624-4811  
E Mail [davidg@felixconstruction.com](mailto:davidg@felixconstruction.com)  
Prepared By: Dana Watts  
E / I & C Division Manager  
Felix Construction Company  
Phone: 480-464-0011  
Cell 602-390-4727  
E Mail danaw@felixconstruction.com, daygeck@bluebottle.com

***Scope Item Descriptions***

**Included Items**

- 1 Install conduit as shown to supports the Microwave Towers at both the Lift Station and Northside BPS. Includes wireway to allow tie in at Panel @ LS for Communications system power. Includes Branch Circuit Breakers for Communications Cabinet power circuits. Includes branch wire for termination by others in Communications Cabinet.
- 2 Included at Northside Booster Station is Sawcut and removal of materials, Slurry 1 sack encasement of DB and restoration of surface. Installation of 4 new 3.5 UGPBs and supporting Conduit to existing MCC-B, Panel A, existing Communications Cabinet and new Communications Cabinet and Tower ( FBO ).
- 3 Concrete Pad for Communication Cabinets at each site
- 4 Preconstruction Services work thru 04.10.09
- 5 Submittals, O&M's, Project As-Built's, Ground Testing, & Training.
- 6 Warranty, 12 month's " Labor and Material " after acceptance for beneficial use.

**Excluded Items**

- 1 Work other than described above.
- 2 Engineering, Utility Company Fee's, Permits, Permit Fee's, and Bonds.

**Sell Price: \$52,462**



**Quote Valid for 30 days from date of issue.**

EXHIBIT C  
TO  
PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
FELIX CONSTRUCTION COMPANY

[Electrical Estimate Summary]

See following page.

**ELECTRICAL ESTIMATE SUMMARY SHEET**

**Electrical Bid:** Avondale 10th Street SLS SCADA MW Tower Upgrades, includes work at Northside BPS.

**Bid Open Date:**

**Estimator:** Mike M.

**Liquid Damages:**

**Completion Time:**

BID ITEM	DESCR	LABOR	COMPANY EQUIP	PERM MAT"L	SUB COSTS	RENTAL COSTS	TOT DIRECT COST	CHECK	STATUS
1	Civil & Concrete	4,572	5,310	1,825	3,200	-	14,907	14,907	Checks OK
2	Conduit & Boxes	8,662	3,372	8,748			20,781	20,781	Checks OK
3	Cable	838	326	1,075			2,240	2,240	Checks OK
4	Lighting & Trim	-	-	-			-	-	Checks OK
5	Gear	493	192	196			881	881	Checks OK
6	Instrumentation	-	-	-			-	-	Checks OK
7	Fabrication & Misc	247	96	325			668	668	Checks OK
8	Other	801	312	287			1,400	1,400	Checks OK
9	Crew-If Crew it up	-	-	-	-	-	-	-	Checks OK
<b>TOTAL ABOVE</b>		<b>15,614</b>	<b>9,608</b>	<b>12,456</b>	<b>3,200</b>	<b>-</b>	<b>40,878</b>	<b>40,878</b>	

State/County Tax Rate	6.30%	(In percentage form)	Direct Job Costs	6,236	15.26%	% of DIRECT COSTS
City Tax Rate	2.50%	(In percentage form)	Cut/Add Amount	(2,149)		
Total Tax Rate	8.80%		Subtotal 1	44,965		
Tax Burden	5.7200%		MARKUP	4,496	4,496	
Bond Rate	0.00%	(Type 0 in front of decimal if under 1)	Subtotal 2	49,461		
Tax/Bond Rate	5.7200%		Bond	-		
Tax/Bond Burden	0.9428	4,298	Tax	3,001		
			Final Bid	52,462		

Job: Avondale 10th Street SLS SCADA MW Tower Upgrades, includes work at Northside BPS.

**Bid Item: 1-Civil and Concrete**

#	Description	Act Quant	Pour Quant	HRS Fore	HRS Journey	HRS Labor	HRS PUw/tool	HRS ij	HRS Hoe/Boom	HRS H2O	HRS Forklift	HRS Rent	HRS Rent	\$ Subs	# Rebar	sf Form	ABC Ton	\$ Other	Total Cost For Item - \$	Comments
1			-																-	
2			-																-	
3	Excavation		-	12	32	32	12		32	16									4,837	
4	Backfill		-	8	22	32	8	32	22	16									4,113	
5	Sand		-																-	
6	ABC		-																-	
7	Haul surplus Spoils		-																-	
8	Utility		-																-	
9	Concrete Encasement (NSBPS)	8	9																1,215	
10	Concrete for Communications Cabinet's (Two at 36" x 72" x 6")	2	3	8	8	8	8								150	100			1,542	
11	Private Locator		-											700					700	
12			-																-	
13	Saw Cut		-											1,250					1,250	
14			-																-	
15	Concrete pour back of sawcut		-											1,250					1,250	
16			-																-	
17			-																-	
18			-																-	
19			-																-	
20			-																-	
21			-																-	
22			-																-	
23			-																-	
24			-																-	
25			-																-	
26			-																-	
27			-																-	
28			-																-	
29			-																-	
30			-																-	
	<b>Total Column</b>	<b>10</b>	12	28	62	72	28	32	54	32	-	-	-	3,200	150	100	-	-		
	<b>Unit Cost</b>	<b>XXXXX</b>	135.00	40.50	30.38	21.60	24.00	9.00	45.00	60.00	45.00	1.00	1.00	1.00	0.70	1.00	25.00			
	<b>Total Cost \$</b>	<b>XXXXX</b>	1,620	1,134	1,883	1,555	672	288	2,430	1,920	-	-	-	3,200	105	100	-	-		14,907







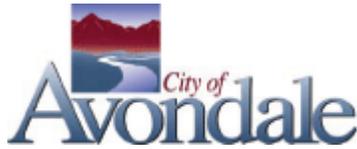




## GENERAL CONDITIONS WORKSHEET

BY: Mike M.

#	DESCRIPTION	QUANT	UNIT	UNIT COST	AMOUNT	Comments
1.	<b>Mobilization/Demobilization:</b>	1		250	250	
	- Company Equipment				-	
	- Trailers				-	
	- Rental Equipment				-	
	- Other				-	
2.	<b>Supervision (Include Pick-up)</b>	16	HR	\$ 68.25	1,092	
3.	<b>Project Management (Incl Pick-up)</b>	24	HR	\$ 68.25	1,638	
4.	<b>Insurance Requirements:</b>				-	
	- Builder's Risk Policy				-	
	- Added General Liability Req'ts				-	
	- Owners contract. Protect.				-	
	- Delete for OCIP				-	
5.	<b>Permits:</b>				-	
	- Local				-	
	- County				-	
	- Railroad				-	
	- Other				-	
6.	<b>Trailers:</b>				-	
	- FCC - storage				-	
	- FCC - office				-	
	- Engineer's office				-	
7.	<b>Temporary/Cellular Phone</b>				-	
8.	<b>Temporary Power:</b>				-	
	- Set-up				-	
	- Construction - monthly				-	
	- Trailer - construction mo.				-	
	- Trailer - Engineer mo.				-	
9.	<b>J-Jon/Sanitation Facilities</b>				-	
10.	<b>Water - drinking/ice</b>	12		\$ 2	18	
11.	<b>Water - construction</b>				-	
12.	<b>Temporary Fencing:</b>				-	
	- Set-up				-	
	- Monthly Charges				-	
13.	<b>Surveying/Construction Staking</b>				-	
14.	<b>Subcontractor Bonds</b>				-	
15.	<b>Construction Testing</b>				-	
16.	<b>Design/P.E. Stamp</b>				-	
17.	<b>Dumpster - monthly</b>				-	
	Dump fees				-	
18.	<b>Clean-up</b>				-	
19.	<b>AGC Fees (1/10 OF 1%)</b>				-	
20.	<b>STS</b>				-	
21.	<b>Liquidated Damages</b>				-	
22.	<b>Traffic Control:</b>				-	
	Traffic plates				-	
	Traffic officer				-	
23.	<b>Subsistence</b>				-	
24.	<b>Courier Fees</b>				-	\$15 each way for courier (5 Star)
25.	<b>Reprographics</b>				-	Plan Sheet Reduction & Copies
26.	<b>O&amp;M Costs</b>		HR	\$ 25	-	Time & Binder Materials
	<b>OCR Recognition</b>				-	
27.	<b>Security Costs</b>		Mo	\$ 2,200		
28.	<b>Other:</b>				-	
	<b>Preconstruction Services</b>	1	LS	\$ 3,238	3,238	As of 04.10.09
					-	
					-	
					-	
	<b>TOTAL</b>				<b>6,236</b>	



# CITY COUNCIL REPORT

**SUBJECT:**

Purchase of two 2009 Ford Crown Victoria Police Interceptors

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Janet Stewart, Field Operations Director (623)333-4747

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council authorize the purchase of two 2009 Ford Crown Victoria Police Interceptors for a cost of \$72,912.96 to replace damaged vehicles and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

The requested units will replace two patrol vehicles that were damaged during the past year. These vehicles are available on the State Contract# SCC070008-2, Phase II from Five Star Ford located in Scottsdale, Arizona.

**DISCUSSION:**

Fleet Services staff coordinated with staff from the Police Department to determine the types of vehicles and equipment options that would best fit their needs. These vehicles are available on the State Contract# SCC070008-2, Phase II from Five Star Ford located in Scottsdale, Arizona.

**BUDGETARY IMPACT:**

Total cost will be \$72,912.96, including taxes and fees. The purchase will be funded by utilizing \$24,207.81 that was paid to the City of Avondale by Dodge for a fire damaged Charger. The remainder of the money, \$48,705.15 will be transferred from the self-insurance fund, per Allen lampaglia, Risk Manager.

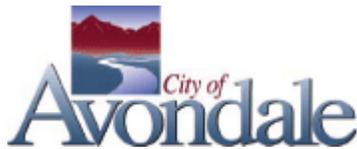
**RECOMMENDATION:**

Staff recommends that the City Council authorize the purchase of two 2009 Ford Crown Victoria Police Interceptors for a cost of \$72,912.96 to replace damaged vehicles and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 2827-609 - Ordering the Sale of General Obligation Bonds, Series A (2009)

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Kevin Artz, Finance and Budget Director (623)333-2011

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a resolution ordering the sale of City of Avondale General Obligation Bonds, Series A (2009) in an amount not to exceed \$31,500,000, and authorizing all actions necessary to proceed with the sale.

**BACKGROUND:**

On September 8, 1998, and May 15, 2007, bond elections were held and the qualified electors authorized the City of Avondale to incur indebtedness in the amount of \$15,000,000 (1998 election) for the purpose of providing funds to construct water and wastewater facilities, \$15,000,000 (2007 election) to construct park facilities, and \$20,000,000 (2007 election) for street and highway improvements within the City.

The fiscal year 2008-17 capital improvement plan (CIP) which was approved by the Citizens CIP Committee in February of 2008 and by Council in June of 2008, includes a General Obligation debt offering of \$7.5M in the wastewater fund, \$8.0M in the parkland fund and \$14.0M in the streets fund. An additional \$2.0 M of authorization is being requested (not to exceed \$31.5M) to provide maximum flexibility (i.e., may be able to issue more bonds if interest rates are lower than projected) and to cover issuance costs.

The proceeds from the debt issued for the wastewater fund will cover a portion of the costs for the construction of the water reclamation facility (the balance will come from development fees and a MDC excise tax bond sale). The proceeds from the debt issued for the parkland fund will cover a portion of the costs for the Avondale Sports Center project (the balance will come from Development fees and the General Fund). The proceeds from the debt issued for the streets fund will cover a portion of the costs for several street projects.

**DISCUSSION:**

There are two steps required to issue General Obligation bonds. The first is a resolution to order the sale of the bonds and the second is a resolution authorizing the issuance of the bonds once the bids have been received.

This resolution orders the sale of the Series 2009 Bonds; fixes the date and hour of the sale; directs the publication of the notice inviting proposals for the purchase of the bonds; and authorizes the preparation, use and distribution of the Official Statement relating to the General Obligation bonds.

The bonds are being sold on a competitive basis, as a result, the Notice Inviting Proposals for the Purchase of General Obligation Bonds (Attachment C) sets the date and time that the bids must be received. The Notice must also be published once a week for two successive weeks in the West

Valley View.

The Notice inviting proposals is being structured to possibly take advantage of an American Recovery and Reinvestment Act (ARRA) program, known as Build America Bonds. Under the program, the Federal Government offers a cash subsidy of 35% of the interest rate for the issuance of taxable bonds. Typically, the City issues tax-exempt bonds, as the interest rates are significantly lower than taxable bonds. Bidders on the City's bonds will have an option to bid the bonds as tax-exempt or as taxable (which the City would then designate as Build America Bonds and request the subsidy). Staff will then select the bid that is most advantageous to the City (see attachment A for additional information on Build America Bonds).

The Official Statement provides information necessary to the prospective buyers of the Bonds, including detailed information on the Series 2009 Bonds, the project description, debt service requirements, sources and uses of funds, audited financial statements and legal documents and disclosures. The resolution delegates the responsibility to prepare the official statement, certify when such official statement is deemed final, and distribute the official statement to the Finance and Budget Director.

Bids are scheduled to be received June 15, 2009 at 10:00 A.M. The second resolution authorizing the issuance of the General Obligation bonds will need to be adopted at the Council meeting on June 15th, after the bids (interest rates) are received. If the second resolution is adopted on June 15th, the bonds are then scheduled to close and fund on July 1, 2009.

#### **BUDGETARY IMPACT:**

The preliminary structure for the Series 2009 Bonds is level debt service for the 25-year term of the bonds. The interest rate on the preliminary debt service schedule is current market rates plus 25 basis points.

The City will be utilizing a competitive bid process; therefore, the actual interest rate will not be determined until June 15, 2009.

The source of repayment on the Series 2009 Bonds is secondary property taxes. The debt service payments have been appropriated in fund 401. Projected revenues are adequate to cover the debt service payments.

#### **RECOMMENDATION:**

Staff recommends that the Mayor and City Council adopt a resolution ordering the sale of City of Avondale General Obligation Bonds Series A (2009) in an amount not to exceed \$31,500,000, and authorizing all actions necessary to proceed with the sale.

#### **ATTACHMENTS:**

Click to download

- [Attachment A- Build America Bonds](#)
- [Attachment B- Official Statement](#)
- [Resolution 2827-609](#)



## BUILD AMERICA BONDS (BAB) – New *Taxable* Municipal Financing

Among the multitude of initiatives in the recently-enacted American Recovery and Reinvestment Act stimulus package are a number of provisions providing new financing vehicles for state and local governments. The centerpiece of this municipal assistance is the Build American Bond (BAB) program, which is specifically designed to assist municipalities in raising funds for local infrastructure projects.

Perhaps the most critical component of the BAB program is that the income from these bonds is *federally-taxable* to the buyer. Under normal circumstances, the taxable municipal market is relatively small, dominated by private purpose bonds and the like. Over the past five years, just less than 7% of all municipal issues were taxable. However, with the turmoil in the credit markets over the past year, municipal issuers have found it very difficult to access the capital markets in raising funds. It is hoped that by structuring the BABs as a taxable program, more buyers will be attracted to the bonds, demand will be stronger, and borrowing costs for state and local issuers will be driven lower.

### BAB Program Specifics

Under the BAB program issuers can opt for one of two types of assistance:

(1) A **subsidy paid directly to the municipal issuer** of approximately 35% (45% if the bonds are Recovery Zone Economic Development Bonds) of whatever the BAB interest costs are for a given issue.

(2) The issuer can elect to pass along a **35% tax credit** to the purchaser of the bond(s). It is expected most BAB issuers will forego the tax credit option and take advantage of the federal subsidy, thereby reducing interest costs.

- The BAB program will be in existence for only two years; **BABs must be issued before January 1, 2011.**
- The stimulus package legislation carried no **limitation on the total amount of BABs** which can be issued by state and local governments.
- Municipalities issuing BABs and claiming the 35% federal subsidy (**Direct Payment Bonds**) are **restricted to capital expenditures**. Direct Payment BABs may *not* be used for working capital purposes or to facilitate refundings. If the credit is passed to investors, there are no restrictions on the use of proceeds.
- There are few **restrictions on the types of bonds that qualify under the Tax Credit BAB program**. Proceed uses are the same as those for “normal” municipal tax-exempt issues. In other words, BABs may be issued to finance the same kind of expenditures as a given issuer would undertake in the tax-exempt market.
- In general, **BABs will be issued as par bonds**, carrying no premiums i.e. a price in excess of par. (According to the statute, any premiums must be de minimis; limited to 0.25% \* years to maturity.) In secondary trading however, a given bond’s price/yield will fluctuate according to market conditions.
- To date, **ten BAB issuers, in nine different states** have come to market raising approximately \$7 billion in BAB debt.
- We expect **BABs to generally be structured as taxable securities** rather than reflect the characteristics of the tax-exempt market.

## **BAB Background**

The rationale for including a Build America Bonds section in the stimulus package is relatively straightforward – BABs are intended to assist state and local governments in addressing the severe problems resulting from the ongoing economic recession. BABs allow municipalities to finance a wide range of projects – such as transportation infrastructure, public safety facilities, energy projects, and governmental housing – at a lower net cost than would normally be available in the tax-exempt market. Simply put: BABs open up a new, desperately needed financing vehicle for municipalities.

Another consideration is that in this recessionary environment, municipal revenues continue to decline, making it more difficult for cash-strapped municipalities to meet their obligations. Although the BAB program can not be used for working capital, it helps issuers fund ongoing or new capital projects.

Finally, as many investors know, the municipal market has been subject to a great deal of stress over the past year or so, with many issuers unable to access the credit markets regardless of the price (coupon) they were willing to pay. Compounding the problem, many issuers have seen credit rating downgrades, which will continue to make it difficult and relatively more expensive when coming to market.

## **Treasury Subsidy**

In designing the BAB program, one of the objectives was to minimize the cost to the Treasury. The taxable nature of the income on these bonds means that buyers will be subject to federal income taxes on ordinary income. (Existing state tax rules will apply to income at the state level.) In effect, the Treasury taxes the BAB income and pays a subsidy to the issuer of 35%. (The reason for the 35% subsidy, rather than some other rate, is the presumption that this is roughly the Treasury tax rate on the BAB income.) Although there will undoubtedly be a net cost to the Treasury, the cost will be minimized because of this arrangement.

Subsequent to issuance, the U.S. Treasury will make a direct payment to the issuer in an amount equal to 35% of the interest payment on the BAB on each interest payment date. For example, if the coupon on a taxable BAB issue is 7.00%, the Treasury will make a payment to the issuer of 2.45%. This reduces the effective cost to the issuer to 4.55%, which is comparable to the cost/coupon of a tax-exempt issue.

## **Potential Buyers**

Generally, there is greater demand for taxable securities in the marketplace than there is for tax-exempt securities. Taxable securities have the potential to appeal to a much broader investor base without regard to the buyer's tax rate. Perhaps most important, taxable securities are appropriate for pension funds, IRAs, 401-Ks, and other types of retirement accounts. Such accounts generally eschew tax-exempt securities. In addition, foreign investors are potential buyers of BABs.

Recently, there has been a dearth of issuance in the long-term corporate debt market. Because of the financial crisis, potential long-term debt issuers, particularly financial institutions, have found little appetite for their longer-dated bonds. Nonetheless, buyers of longer-duration corporate debt, such as pension funds and insurance companies still have a need for long-term assets. For such entities, taxable BABs fill a critical niche and demand for these longer-dated BABs should be relatively strong.

## The Structure of BAB Issues

### SIZE

- We expect larger issuers, such as states, cities, counties transportation authorities, etc. to be among the first to take advantage of BAB issuance.
- In order to appeal to a broader range of long-duration buyers, BAB issues will need to be relatively large, thus ensuring good secondary liquidity. Consequently there will be a tendency for *larger* issuers to dominate the market. Nonetheless, there will undoubtedly be a number of small issues, i.e. < \$50 million.

### MATURITY / MAKE -WHOLE CALL

- No maximum limit, but expect most BAB issues to have 30-year maturities.
- We expect to see BAB issues with both serial and term securities.
- Most issues should have bullet maturities.
- BABs will carry make-whole call features (see detailed discussion below).

### COUPON

- There is no restriction on the type of coupon, i.e. floating- or fixed-rate; however, to date all of the BAB issues that have come to market have carried fixed coupons.

### CREDIT CONSIDERATIONS

- BABs will carry ratings from the major ratings agencies, i.e. Moody's and S&P. Despite the fact that these are taxable securities, the specific rating for a given issue is expected to mimic the rating the issuer would have received for a tax-exempt issue.
- The largest BAB issues to come to market to date were general obligation or revenue pledge obligation bonds. The security features backing these BABs are identical to traditional tax-exempt GOs (unlimited ad valorem property tax pledge) or tax-exempt revenue bonds (pledge on either gross or net revenues from a specified source).
- In terms of the overall credit profile of BABs; municipal bonds are generally considered high-quality credits with relatively-low default rates. A Moody's study found that between 1970 and 2006, the 10-year cumulative default rate for all investment-grade municipal bonds was 0.07%, compared to 2.09% for comparably-rated corporate bonds. In cases of default, muni bond investors are likely to enjoy a higher rate of recovery of principal and interest on their investment after a default than corporate bond investors. The average recovery rate on defaulted municipal bonds has been 68% of par, compared to 42% of par for defaulted corporate bonds. Nearly half of investors in defaulted muni bonds recovered between 75-100% of par, compared to 17% for defaulted corporate bonds.

### OTHER TYPES OF MUNICIPAL ISSUANCE AUTHORIZED UNDER THE STIMULUS PACKAGE

- There are a number of types of tax credit bonds authorized under the American Recovery and Reinvestment Act of 2009, which are not specifically BABs:
- Recovery Zone Economic Development Bonds, New Clean Renewable Energy Bonds (CREBs), Qualified Zone Academy Bonds (QZABs), Qualified School Construction Bonds (QSCBs), and Qualified Energy Conservation Bonds (QECBs).
- Each of these has its own particular issuance and usage constraints and each generates tax credits which can be applied in various ways.

## Make-Whole Call Provision

A critical component of the Build America Bonds that differentiates these securities from traditional tax-exempt municipal bonds is the optional redemption make-whole provision, which is most often associated with taxable corporate issues. This call feature requires an issuer to pay a premium to redeem securities prior to maturity. The terms will differ for each issue, but generally, the redemption price to an issuer is the greater of (1) the principal amount being redeemed (par), or (2) the sum of the present value of remaining principal and interest to the maturity date, discounted to present value, at the Treasury rate plus a disclosed spread. (The particular Treasury rate used in the calculation is the nearest CMT which matches the number of years to maturity; e.g. if a make-whole call provision is exercised at the point when there are 10 years until maturity, then the 10-year CMT is used as the discount rate.) If invoked prior to maturity, the bondholder receives an amount potentially well above par. Clearly, this make-whole call would be to the buyers' advantage and serves as a disincentive for the issuer to call the bonds prior to maturity.

*All BAB bonds contain an extraordinary call feature which states that if the issuer ceases to receive the subsidy, i.e. a change in Treasury policy, the bonds are redeemable at the greater of (1) the principal amount being redeemed, or (2) the sum of the present value of remaining principal and interest to the maturity date, discounted to present value, at the Treasury rate plus 100 basis points. This call feature results in an even greater call "premium."*

## Comparison: Recent Large BAB Issues 30 Year Maturities

	State of California*	University of Virginia	NJ Turnpike	NY MTA
<b>Type:</b>	GO	Revenue	Revenue	Revenue
<b>Sale Date:</b>	22-Apr-09	15-Apr-09	20-Apr-09	23-Apr-09
<b>Total Par \$000,000</b>	3,000	250	1,375	750
<b>CUSIP:</b>	13063A5G5	915217RY1	646139W35	59259NZH9
<b>Maturity:</b>	April 1, 2039	September 1, 2039	January 1, 2040	November 15, 2039
<b>Security Source:</b>	General Fund	Revenue Pledge	Revenue Pledge	Revenue Pledge
<b>Ratings:</b>	A2/A	Aaa/AAA	A3/A+	/AA
<b>Coupon (30 year):</b>	7.550%	6.200%	7.414%	7.336%
<b>Yield at Issuance:</b>	7.434%	6.221%	7.414%	7.336%
<b>Bps Spread &gt; UST at issuance:</b>	365	250	370	350
<b>Bps Spread &gt; MMD at issuance:</b>	212	154	197	199
<b>Make Whole Call:</b>	UST +50 bps	UST +40 bps	UST +50 bps	UST +50 bps
<b>Extraordinary Redemption</b> <i>(if 35% subsidy is reduced)</i>	UST +100 bps	UST +100 bps	UST +100 bps	UST +100 bps

\*The State of California issued \$6.885 billion of taxable general obligation bonds on April 22; \$5.23 billion of the offering were BABs. In addition to the \$3 billion maturity above, the State issued a \$2 billion 25-year BAB and \$233 million in a 30-year BAB maturity with a mandatory put at call in 2013. All bonds issued have a make-whole call provision.

All of the issues listed above were considered "well received." Investor demand was very strong and each of these issuers has realized savings from BABs versus traditional long-term tax-exempt issues.

- The NJ Turnpike issue was several times oversubscribed. Bond prices rose sharply when the bonds were released for trading.
- The University of Virginia was also oversubscribed with a bid-to-cover ratio of approximately 5:1. The MSRB reports bonds originally sold at 99.711 cents on the dollar. A day subsequent to issuance, the same bonds traded as high as 105.28, to yield 5.83%.
- The State of California estimates that its recently-issued Build America Bonds will save the state \$1.15 billion in interest over the next 30 years, compared with conventional tax-exempt municipals.

## Relative Value

Although it is only a few weeks old, the Build America Bond program has been an unqualified success thus far. Not only have investors found these taxable bonds attractive on a relative-value basis, but issuers have also benefited from lower interest costs.

BABs fill a market niche for investors by providing a supply of very liquid, essentially non-callable, good quality, longer-duration taxable instruments, at relatively wide spreads. Thus far, it appears that the bulk of the buyers of BABs are *not* traditional municipal tax-exempt investors. Rather, a broad generalization would describe BAB investors as institutional taxable corporate bond buyers.

Although there are a number of 30-year industrial issues outstanding, the overall amount in this end of the market is relatively limited. Consequently, we believe BABs will have tremendous appeal to buyers in that sector of the market because of the size of the issues, i.e. secondary market liquidity.

For example, Target Corp (A2/A+) 7s of Jan 2038, with an issue size of \$2.3 billion, a yield of ~ 7.25%, had a spread of +340 bps to the 30-year UST. The spread of the California BAB issue is +15 basis points wider, at 365 bps.

A highly-rated Shell Oil RDSALN (Aa1/AA+) 6.375% of December 2038, with an issue size of \$2.8 billion, is trading around 5.75%, which is a spread of roughly +190 bps. The spread of the University of Virginia BAB (Aaa/AAA) is +60 greater than the Shell at +250 bps.

## BAB Effect on the Tax-Exempt Market

Because large municipal issuers will likely favor BABs over traditional tax-exempt financing, for at least the next two years, tax-exempt issuance may decline somewhat in 2009 and possibly in 2010. This reduced supply suggests that existing tax-exempt issues should benefit from a scarcity standpoint.

With less supply this year, we would expect tax-exempt spreads to tighten over the short term as the municipal market strives to find equilibrium and adjust to BABs. In addition, as the popularity of BABs grows and more issuers turn to them, we would expect to see an increased amount of calls of existing tax-exempt issues.

## Are BABs the Precursor for the Elimination of Tax-Exempt Income?

- We do not think BABs will totally supplant the traditional tax-exempt market in any meaningful sense.
- The window for issuance under the BAB program is finite. BABs must be issued by the end of 2010. The intent of BAB is to *temporarily* assist local governments in meeting capital project funding needs.
- Presumably, when the fixed income markets return to “normal” and municipal spreads revert to historical norms, the relative attractiveness of BABs for issuers will diminish.
- Although many argue that tax-exempt income “costs” the U.S. Treasury revenue, we believe that as currently structured, BABs will probably cost the U.S. Treasury more. Under BABs, the Treasury subsidizes issuers at a 35% rate. However, we speculate that the effective tax rate of a BAB buyer (on average) is less than 35%. In order to “breakeven,” the Treasury needs to collect taxes at a 35% rate on every BAB bond. Consequently, it is a net cost when the marginal tax rate of a BAB buyer is less than 35%. This differential is a disincentive for the Treasury to continue BABs beyond the initial expiration date.
- Any major change in the treatment of tax-exempt municipal income will require Congressional legislation. Given the current state of the economy and the tremendous number of initiatives underway because of the economic slowdown, we do not see Congress enacting any change in the tax laws at this time.

**Kevin Schultze**  
Director, Portfolio Strategy Group

**Marie Autphenne**  
Municipal Credit Group

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NEW ISSUE – BOOK-ENTRY-ONLY FORM

RATINGS: See “RATINGS” herein.

*In the opinion of Bond Counsel, assuming compliance with certain tax covenants, interest on the Bonds will be excluded from gross income for federal income tax purposes under existing statutes, regulations, rulings and court decisions. Interest on the Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and will not be taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax on certain corporations. However, see “TAX MATTERS” herein for a description of certain federal tax consequences of ownership of the Bonds. Bond Counsel is further of the opinion that, assuming interest will be so excludable for federal income tax purposes, the interest on the Bonds will be exempt from income taxation under the laws of the State of Arizona. See also “ORIGINAL ISSUE DISCOUNT” and “BOND PREMIUM” herein.*

**\$31,500,000**

**CITY OF AVONDALE, ARIZONA  
GENERAL OBLIGATION BONDS  
(PROJECTS OF 1998 AND 2007),  
SERIES 2009**

**DRAFT III  
5/26/09**

*Dated:* Date of Initial Delivery

*Due:* July 1, as shown on the inside front cover page

The City of Avondale, Arizona (the “City”) will issue its General Obligation Bonds, (Projects of 1998 and 2007), Series 2009 (the “Bonds”) for the purpose of providing funds to (i) construct street improvements, sewer improvements and a multi-purpose recreation center and (ii) pay costs incurred in connection with the issuance of the Bonds.

The Bonds will mature on the dates and in the amounts and will bear interest at the rates set forth on the inside front cover page of this Official Statement. Interest on the Bonds will accrue from the dated date thereof and will be payable semiannually on each January 1 and July 1 (each an “Interest Payment Date”) commencing July 1, 2009, until maturity or prior redemption.

**SEE INSIDE COVER PAGE FOR MATURITY SCHEDULE**

The Bonds will be issued in the form of fully-registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as the securities depository for the Bonds. Purchases of the Bonds initially will be made in book-entry form in the book-entry-only system of DTC only through DTC participants in amounts of \$5,000 of principal due on a single maturity date or any integral multiple thereof. Purchasers will not receive certificates representing their beneficial interests in the Bonds. DTC will be responsible for distributing the principal and interest payments to its direct and indirect participants who will, in turn, be responsible for distribution of such amounts to the beneficial owners of the Bonds (the “Beneficial Owners”).

The City and DTC each reserve the right to discontinue the use of the book-entry-only system at any time. Utilization of the book-entry-only system will affect the method and timing of payment of principal of and interest on the Bonds and the method of transfer of the Bonds. So long as the book-entry-only system is in effect, a single, fully-registered Bond for each maturity thereof will be registered in the name of Cede & Co., as nominee of DTC, through Zions First National Bank, the initial bond registrar and paying agent. So long as the book-entry-only system is in effect and Cede & Co. is the registered owner of the Bonds, all references herein to owners of the Bonds will refer to Cede & Co. and not the Beneficial Owners. See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.”

Certain of the Bonds will be subject to optional and mandatory redemption prior to their stated maturity dates as described herein. See “THE BONDS – Redemption Provisions” herein.

Principal of and interest on the Bonds will be payable from a continuing, direct, annual, ad valorem tax levied against all taxable property within the boundaries of the City, unlimited as to rate or amount. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE BONDS” herein.

***Unconditional proposals for the purchase of the Bonds will be received through the facilities of PARITY® until 10:00 a.m., Mountain Standard Time on Monday, \_\_\_\_\_, 2009, in accordance with the Notice Inviting Proposals for the Purchase of Bonds (the “Notice”). Please refer to the Notice for additional information concerning bidding parameters and requirements for the purchase of the Bonds (including the good faith deposit or financial surety bond requirements).***

The Bonds are offered when, as and if issued by the City and received by the underwriter identified below (the “Underwriter”) subject to the legal opinion of Greenberg Traurig, LLP, Bond Counsel, as to validity and tax exemption. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2009.

*This cover page contains certain information with respect to the Bonds for convenience of reference only. It is not a summary of material information with respect to the Bonds. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision with respect to the Bonds.*

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

## MATURITY SCHEDULE\*

Maturity Date (July 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP® No. (a)
2009	\$ 1,350,000	%	%	
2010	1,150,000			
2011	1,200,000			
2012	1,100,000			
2013	1,100,000			
2014	1,100,000			
2015	1,300,000			
2016	1,350,000			
2017	1,405,000			
2018	1,460,000			
2019	1,520,000			
2020	1,585,000			
2021	1,660,000			
2022	1,745,000			
2023	1,830,000			
2024	1,925,000			
2025	2,020,000			
2026	2,120,000			
2027	2,230,000			
2028	2,350,000			

\$ \_\_\_\_\_ % Term Bond due July 1, 20\_\_ – Yield \_\_\_\_% CUSIP® No. \_\_\_\_ (a)

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\* Subject to change.

(a) Copyright 2007, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by the CUSIP Service Bureau, operated by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services Bureau. CUSIP numbers have been assigned by an independent company not affiliated with the District and are included solely for the convenience of the holders of the Bonds. The District is not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bonds.

## **CITY OF AVONDALE, ARIZONA**

### **CITY COUNCIL**

Marie Lopez-Rogers, *Mayor*

Ken Weise, *Vice Mayor*  
Jim Buster, *Council Member*  
Jason Earp, *Council Member*

Stephanie Karlin, *Council Member*  
Jim McDonald, *Council Member*  
Frank Scott, *Council Member*

### **CITY ADMINISTRATIVE OFFICIALS**

Charlie McClendon  
*City Manager*

David Fitzhugh, P.E.  
*Assistant City Manager*

Kevin Artz, CPA  
*Finance & Budget Director*

Rogene Hill  
*Assistant City Manager*

Gust Rosenfeld P.L.C.  
*City Attorney*

### **BOND COUNSEL**

Greenberg Traurig, LLP  
*Phoenix, Arizona*

### **BOND REGISTRAR AND PAYING AGENT**

Zions First National Bank  
*Los Angeles, California*

### **FINANCIAL ADVISOR**

Stone & Youngberg LLC  
*Phoenix, Arizona*

## **REGARDING THIS OFFICIAL STATEMENT**

No dealer, broker, salesperson or other person has been authorized by the City or the Financial Advisor to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth in this Official Statement, which includes the cover page, the inside cover page and appendices hereto, has been obtained from the Finance Director of the City, the Arizona Department of Revenue and the offices of the Assessor, Finance Department and Treasurer of Maricopa County, Arizona, and other sources which are considered to be accurate and reliable and customarily relied upon in the preparation of similar official statements, but such information is not guaranteed as to accuracy or completeness and is not to be construed as the promise or guarantee of the City or the Financial Advisor. The presentation of information, including tables of receipts from taxes and other sources, is intended to show recent historical information and is not intended to indicate future or continuing trends in the financial position or other affairs of the City. All information, estimates and assumptions contained herein have been based on past experience and on the latest information available and are believed to be accurate and reliable, but no representations are made that such information, estimates and assumptions are correct, will continue, will be realized or will be repeated in the future. To the extent that any statements made in this Official Statement involve matters of forecasts, projections, opinions, assumptions or estimates, whether or not expressly stated to be such, they are made as such and not as representations of fact or certainty, and no representation is made that any of these statements have been or will be realized. All forecasts, projections, assumptions, opinions or estimates are “forward looking” statements that must be read with an abundance of caution and that may not be realized or may not occur in the future. Information other than that obtained from official records of the City has been identified by source and has not been independently confirmed or verified by the City or the Financial Advisor and its accuracy cannot be guaranteed. The information and forward looking statements herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or any of the other parties or matters described herein since the date hereof.

The Bonds will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange in reliance upon certain exemptions. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the merits of the Bonds, the accuracy or adequacy of this Official Statement or approved the Bonds for sale.

As the “obligated person” with respect to the Bonds, the City has undertaken to provide continuing disclosure as described in this Official Statement under “CONTINUING DISCLOSURE” and in APPENDIX E – “FORM OF CONTINUING DISCLOSURE UNDERTAKING,” all pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

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**\$31,500,000**  
**CITY OF AVONDALE, ARIZONA**  
**GENERAL OBLIGATION BONDS**  
**(PROJECTS OF 1998 AND 2007),**  
**SERIES 2009**

**NOTICE INVITING PROPOSALS FOR THE PURCHASE OF BONDS**

*[To be included – most recent copy in Resolution]*

## **OFFICIAL STATEMENT**

**\$31,500,000**  
**CITY OF AVONDALE, ARIZONA**  
**GENERAL OBLIGATION BONDS**  
**(PROJECTS OF 1998 AND 2007),**  
**SERIES 2009**

### **INTRODUCTORY STATEMENT**

This Official Statement, which includes the cover page, the inside cover page and the appendices attached hereto, has been prepared on behalf of the City of Avondale, Arizona (the "City") in connection with the original issuance and sale by the City of \$31,500,000 principal amount of General Obligation Bonds, (Projects of 1998 and 2007), Series 2009 (the "Bonds") identified on the inside front cover page hereof. Certain information concerning the authorization, purpose, terms, conditions of sale and sources of payment of and security for the Bonds is stated in this Official Statement.

All financial and other information in this Official Statement has been provided by the City from its records, except for information expressly attributed to other sources. The presentation of information, including tables of receipts from taxes and other sources, is intended to show recent historic information, and is not intended to indicate future or continuing trends in the financial position or other affairs of the City. No representation is made that past experience, as is shown herein, will necessarily continue or be repeated in the future.

As used in this Official Statement "debt service" means principal of and interest on the obligations and reference to, "County" means Maricopa County, Arizona, and "State" or "Arizona" means the State of Arizona.

Neither this Official Statement nor any statement that may have been made orally or in writing in connection herewith is to be considered as or as part of a contract with the original purchasers or subsequent owners or beneficial owners of the Bonds.

### **THE BONDS**

#### **Authorization and Purpose**

The Bonds will be issued pursuant to the laws of the State, including particularly Title 35, Chapter 3, Article 3, Arizona Revised Statutes, as amended, a vote of the qualified electors of the City at elections held on September 8, 1998 and May 15, 2007 and a resolution adopted by the Mayor and Council of the City on \_\_\_\_\_, 2009 (the "Resolution"). Proceeds from the sale of the Bonds will be used for the purpose of providing funds to (i) construct street improvements, sewer improvements and a multi-purpose recreation center and (ii) pay costs incurred in connection with the issuance of the Bonds.

After the sale and delivery of the Bonds, the City will have the following principal amounts of authorized but unissued general obligation bonds remaining for various purposes from a vote of the qualified electors of the City held in the following elections:

Date of Election	Principal Amount
October 10, 1995	\$ 3,570,000
September 8, 1998	10,250,000 (a)
May 15, 2007	47,000,000 (a)
Total Authorized but Unissued General Obligation Bonds	<u>\$ 60,820,000</u>

(a) Excludes the Bonds.

Additional bonds payable from the same source may also be authorized at subsequent elections in and for the District.

The City expects to issue additional general obligation bonds in the future pursuant to the foregoing and future voted bond authorizations. Such bonds will be payable from the same levy of the *ad valorem* property tax as for the Bonds and all other outstanding general obligation bonds of the City. The purposes for which such authorized but unissued general obligation bonds may be issued are set forth below:

Purpose	Remaining Authorization
Water improvements	\$ 3,570,000
Water and sewer system improvements	7,000,000 (a)(b)
Water and wastewater system improvements	5,000,000 (a)
Street and highway improvements	8,250,000 (b)
Parks, community centers and recreational facilities	7,000,000 (b)
Public safety facilities	13,000,000
General government facilities	17,000,000
Library facilities	None
Total Authorized but Unissued	<u>\$ 60,820,000 (b)</u>

(a) May be issued as revenue bonds or general obligation bonds.

(b) Excludes amounts for projects funded by the Bonds.

The City also has \$3,875,000 authorized but unissued Water Infrastructure Finance Authority of Arizona loan obligations from a March 17, 1992 election.

Source: The City.

## General Description

The Bonds will be dated as of the date of their initial delivery and initially will be registered only in the name of Cede & Co., the nominee of The Depository Trust Company, New York, New York (“DTC”), under the book-entry-only system described in APPENDIX F (the “Book-Entry-Only System”). Beneficial ownership interests in the Bonds may be purchased through direct and indirect participants of DTC in amounts of \$5,000 of principal due on a specific maturity date or integral multiples thereof. See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.” The Bonds will mature on the dates and in the principal amounts and bear interest at the rates from their date, all as set forth on the inside cover page and will be payable on July 1, 2009, and on each January 1 and July 1 thereafter (each an “interest payment date”) until maturity or prior redemption.

## Bond Registrar and Paying Agent

Zions First National Bank will serve as the initial bond registrar, paying and transfer agent (the “Bond Registrar and Paying Agent”) for the Bonds. The City may change the Bond Registrar and Paying Agent without notice to or consent of the owners of the Bonds.

## Redemption Provisions\*

*Optional Redemption.* The Bonds maturing before or on July 1, 2019, will not be subject to redemption prior to maturity. The Bonds maturing on or after July 1, 2020, will be subject to redemption prior to maturity, at the option of the City, in whole or in part from maturities selected by the City and by lot within any maturity, on July 1, 2019, or any interest payment date thereafter, by the payment of a redemption price equal to the principal amount of each such Bond to be redeemed plus interest accrued to the date fixed for redemption without a premium.

*Mandatory Redemption of the Bonds.* The Bonds maturing on July 1, 20\_\_\_, will be redeemed prior to maturity, by lot, on July 1 in the years and in the principal amounts set forth below, by the payment of a redemption price equal to the principal amount of each such Bond to be redeemed plus interest accrued to the date fixed for redemption without a premium:

<u>Year</u>	<u>Principal Amount</u>
	\$
	(maturity)

*Notice of Redemption.* So long as the Book-Entry-Only System is in effect, redemption notices will be sent only to DTC by electronic media, not more than 60 nor less than 30 days prior to the date set for redemption. See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.”

*Effect of Redemption.* On the date designated for redemption, the Bonds or portions thereof to be redeemed will become and be due and payable at the redemption price for such Bonds or portions thereof, and, if moneys for payment of the redemption price are held in a separate account, interest on such Bonds or portions thereof to be redeemed will cease to accrue, such Bonds or portions thereof will cease to be entitled to any benefit or security under the Resolution, the owners of such Bonds or portions thereof will have no rights in respect thereof except to receive payment of the redemption price thereof and such Bonds or portion thereof will be deemed paid and no longer outstanding. DTC’s practice is to determine by lot the amount of the interest of each Direct Participant (as defined in APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM”) to be redeemed.

*Redemption of Less Than All of a Bond.* The District may redeem any amount which is included in a Bond in the denomination in excess of, but divisible by, \$5,000.

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\* Subject to change.

## SECURITY FOR AND SOURCES OF PAYMENT

For the purpose of paying the principal of, interest on, and costs of administration of the registration and payment with respect to the Bonds, the City will cause to be levied on all the taxable property in the City a continuing, direct, annual, *ad valorem* tax sufficient to pay all such principal, interest, and administration costs of and on the Bonds as the same become due. The Bonds will be payable from this tax without limit as to rate or amount. A record of property taxes levied and collected for the City for the most recent five fiscal years may be found in APPENDIX B – “CITY OF AVONDALE, ARIZONA – FINANCIAL DATA” herein. Taxes in an amount sufficient to pay the interest on all the Bonds, and the installments of the principal of the Bonds becoming due and payable on July 1 of the ensuing fiscal year, are to be levied, assessed and collected as other taxes of the City on the net secondary assessed valuation of the taxable property in the City. The proceeds of such taxes will be kept by the City in a debt service fund and by law may be used only for payment of principal, interest, premium, if any, and costs of the Bonds. For the *ad valorem* property tax levy and collection procedure, see APPENDIX B – “CITY OF AVONDALE, ARIZONA – FINANCIAL DATA – PROPERTY TAXES.”

## ESTIMATED DEBT SERVICE REQUIREMENTS

The following schedule illustrates the annual debt service on general obligation bonds outstanding and also the estimated annual debt service requirements on the Bonds.

**TABLE 1**

**Schedule of Estimated Debt Service Requirements (a)  
City of Avondale, Arizona**

Fiscal Year	Bonds Outstanding		The Bonds		Total Estimated Annual Debt Service Requirements*
	Principal	Interest	Principal*	Estimated Interest (b)	
2008/09	\$ 3,070,000	\$ 488,630	\$ 1,350,000	\$ 239,319 (c)	\$ 5,147,949
2009/10	2,195,000	402,240	1,150,000	1,395,413	5,142,653
2010/11	1,140,000	333,280	1,200,000	1,360,913	4,034,193
2011/12	1,205,000	290,805	1,100,000	1,312,913	3,908,718
2012/13	1,255,000	246,355	1,100,000	1,268,913	3,870,268
2013/14	1,315,000	198,850	1,100,000	1,224,913	3,838,763
2014/15	1,010,000	147,868	1,300,000	1,180,913	3,638,780
2015/16	1,280,000	106,643	1,350,000	1,128,913	3,865,555
2016/17	595,000	45,618	1,405,000	1,074,913	3,120,530
2017/18	385,000	18,673	1,460,000	1,018,713	2,882,385
2018/19			1,520,000	960,313	2,480,313
2019/20			1,585,000	891,913	2,476,913
2020/21			1,660,000	816,625	2,476,625
2021/22			1,745,000	733,625	2,478,625
2022/23			1,830,000	646,375	2,476,375
2023/24			1,925,000	554,875	2,479,875
2024/25			2,020,000	458,625	2,478,625
2025/26			2,120,000	357,625	2,477,625
2026/27			2,230,000	246,325	2,476,325
2027/28			2,350,000	129,250	2,479,250
	<u>\$ 13,450,000</u>		<u>\$ 31,500,000</u>		

\* Subject to change.

(a) Prepared by the Financial Advisor.

(b) Interest is estimated at 5.00% per annum for the Bonds.

(c) The first interest payment on the Bonds will be due July 1, 2009. Thereafter, interest on the Bonds will be payable semiannually on January 1 and July 1 until maturity or prior redemption.

## LITIGATION

No litigation or administrative action or proceeding is pending (a) restraining or enjoining, or seeking to restrain or enjoin, (i) the issuance and delivery of the Bonds or (ii) the levy and collection of taxes to pay the debt service on the Bonds or (b) contesting or questioning (i) the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered or (ii) the validity of the Bonds. Representatives of the City will deliver a certificate to that effect at the time of the initial delivery of the Bonds.

## RATINGS

Moody's Investors Service ("Moody's") and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") have assigned the ratings of "\_\_\_" and "\_\_\_," respectively, to the Bonds. Such ratings reflect only the views of Moody's and S&P. An explanation of the significance of a rating assigned by Moody's may be obtained at 7 World Trade Center, 250 Greenwich Street, Public Finance Group, 23rd Floor, New York, New York 10079. An explanation of the significance of any rating assigned by S&P may be obtained at 55 Water Street, New York, New York 10041. Such ratings may be revised downward or withdrawn entirely at any time by Moody's or S&P, if, in their judgment, circumstances so warrant. Any downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds. The City has covenanted in its continuing disclosure undertaking that it will file notice of any formal change in any rating relating to the Bonds. See "CONTINUING DISCLOSURE" and APPENDIX E – "FORM OF CONTINUING DISCLOSURE UNDERTAKING" herein.

## LEGAL MATTERS

The Bonds are sold with the understanding that the City will furnish the Purchaser with the approving opinion of Greenberg Traurig, LLP, Phoenix, Arizona ("Bond Counsel"). A draft of such approving opinion is included as APPENDIX D – "FORM OF APPROVING LEGAL OPINION" hereto; provided, however, the opinion delivered may vary from the text if necessary to reflect facts and laws on the date of delivery. Bond Counsel is to render its opinion, which will speak only as of its date, upon the validity and enforceability of the Bonds under State law and on the exclusion of the interest income on the Bonds for federal income tax purposes from gross income for purposes of calculating federal income taxes and of the exemption of the interest income on the Bonds from State income taxes. (See "TAX MATTERS," "ORIGINAL ISSUE DISCOUNT" and "BOND PREMIUM" herein.) Payment of the fees of Bond Counsel are contingent upon the delivery of the Bonds and are expected to be paid from proceeds of the sale of the Bonds.

Bond Counsel has not participated in the preparation of this Official Statement and will not opine upon its accuracy, completeness or sufficiency. Bond Counsel has not been engaged to confirm, examine or verify the accuracy, completeness or fairness of any information in this Official Statement, including the financial or statistical statements or data contained in this Official Statement and will express no opinion with respect thereto.

From time to time, there are legislative proposals (and interpretations of such proposals by courts of law and other entities and individuals) that, if enacted, could alter or amend the property tax system of the State and numerous matters, both financial and nonfinancial, impacting the operations of municipalities that could have a material impact on the City and could adversely affect the secondary market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to obligations (such as the Bonds) issued prior to enactment.

The legal opinion to be delivered concurrently with the delivery of the Bonds expresses the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## **TAX MATTERS**

The Internal Revenue Code of 1986, as amended (the “Code”) imposes various restrictions, conditions and requirements that the City must continue to meet with respect to the Bonds after the issuance thereof in order that interest on the Bonds not to be included in gross income for federal income tax purposes. The failure by the City to meet these requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. The City has covenanted in the Resolution to take the actions required by the Code in order to maintain the exclusion from federal gross income of interest on the Bonds.

In the opinion of Bond Counsel, rendered with respect to the Bonds on the date of issuance of the Bonds, assuming continuing compliance by the City with the tax covenants referred to above, under existing statutes, regulations, rulings and court decisions, interest on the Bonds will be excluded from gross income for federal income tax purposes. Interest on the Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and will not be taken into account in determining adjusted current earning for purposes of computing the alternative minimum tax imposed on certain corporations. Bond Counsel is further of the opinion upon the date of issuance of the Bonds that, assuming interest is so excludable for federal income tax purposes, the interest thereon will be exempt from income taxation under the laws of the State.

Except as described above, Bond Counsel will express no opinion regarding other tax consequences resulting from the ownership of, receipt or accrual of interest on or disposition of the Bonds. Prospective purchasers of the Bonds should be aware that the ownership of the Bonds may result in other collateral federal tax consequences, including (i) the denial of a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds, in the case of a financial institution, that portion of an owner’s interest expense allocable to interest on a Bond; (ii) the reduction of the loss reserve deduction for property and casualty insurance companies by 15% of certain items, including the interest income for federal tax purposes; (iii) the inclusion of interest on the Bonds in the earnings of certain foreign corporations doing business in the United States of America for purposes of the branch profits tax; (iv) the inclusion of interest on the Bonds in passive investment income subject to federal income taxation of certain Subchapter S corporations with Subchapter C earnings and profits at the close of the taxable year; and (v) the inclusion in gross income of interest on the Bonds by recipients of certain Social Security and Railroad Retirement benefits.

Bond Counsel’s opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Bond Counsel as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel’s attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Bond Counsel’s opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Bond Counsel’s professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinion.

## **ORIGINAL ISSUE DISCOUNT**

The initial offering prices of the Bonds maturing on July 1, 20\_\_ through and including July 1, 20\_\_ (referred to in this section as the “Discount Bonds”), are less than the stated principal amounts thereof. Under the Code, the difference between the principal amount of the Discount Bonds and the initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Discount Bonds of the same maturity was sold, constitutes to an initial purchaser “original issue discount.” Original issue discount represents interest which is excluded from gross income; however, such interest is taken into account for purposes of determining the alternative minimum tax imposed on corporations and may result in the collateral federal tax consequences described above under “TAX MATTERS.” Original issue discount will accrue actuarially over the term of a Discount Bond at a constant interest rate. A purchaser who acquires a Discount Bond in the initial offering to the public at an initial offering thereof as set forth on the inside cover page of this Official Statement will be treated as receiving an amount of interest excludable from gross income for federal income tax purposes equal to the original issue discount accruing during the period such purchaser holds such Discount Bond and will increase its adjusted basis in such Discount Bond by

the amount of such accruing discount for purposes of determining taxable gain or loss on the sale or other disposition of such Discount Bond. The federal income tax consequences of the purchase, ownership and redemption, sale or other disposition of the Discount Bonds which are not purchased in the initial offering at the initial offering price may be determined according to rules which differ from those described above. Prospective purchasers of the Discount Bonds should consult their own tax advisors with respect to the precise determination for federal income tax purposes of interest accrued upon sale, redemption or other disposition of the Discount Bonds and with respect to the tax consequences of owning and disposing of the Discount Bonds.

## **BOND PREMIUM**

The difference between the stated principal amount of the Bonds maturing on July 1, 20\_\_ through and including July 1, 20\_\_ (referred to in this section as the “Premium Bonds”) and the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Premium Bonds of the same maturity was sold, constitutes to an initial purchaser amortizable “bond premium” that is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Bond. For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, a purchaser who acquires such obligation in the initial offering to the public at the initial offering price thereof as set forth on the inside front cover page of this Official Statement is required to decrease such purchaser’s adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Premium Bonds. Prospective purchasers of the Premium Bonds should consult with their own advisors with respect to the tax consequences of owning and disposing of the Premium Bonds.

## **FINANCIAL ADVISOR**

The Financial Advisor is providing certain financial consulting services to the City in connection with the issuance of the Bonds. The Financial Advisor has assisted in the assemblage and preparation of this Official Statement on behalf of the City, but has not verified all of the factual information contained herein, nor has it conducted a detailed investigation of the affairs of the City for the purpose of passing upon the accuracy or completeness of this Official Statement. No person is entitled to rely on the Financial Advisor’s participation as an assumption of responsibility for, or an expression of opinion of any kind with regard to, the accuracy or completeness of the information contained herein.

## **CONTINUING DISCLOSURE**

The City will enter into a Continuing Disclosure Undertaking, dated the date of delivery of the Bonds (the “Disclosure Agreement”), the form of which is included in APPENDIX E – “FORM OF CONTINUING DISCLOSURE UNDERTAKING.” Pursuant to the Disclosure Agreement, the City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City and the Bonds by no later than February 1 in each year (the “Annual Reports”) and to provide notices of the occurrence of certain enumerated material events (the “Notices”). Such covenant by the City will only apply so long as the Bonds remain outstanding under the Resolution. The foregoing covenant will terminate upon the termination of the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12(b)(5) (the “Rule”) by legislative, judicial or administrative action. The Annual Reports will each be filed by the City through the Electronic Municipal Market Access system (“EMMA”). The Notices will be filed by the City, prior to and on June 30, 2009, with each Nationally Recognized Municipal Securities Information repository (“NRMSIRs”) as well as any state information depository that is subsequently established for the State (the “SID”) or with a Central Post Office (“CPO”), and the Municipal Securities Rulemaking Board (the “MSRB”), and after June 30, 2009, through EMMA. (There is not currently a SID for Arizona.) The specific nature of the information to be contained in the Annual Reports and the Notices and the method of filing each is described in the form of the Disclosure Agreement, which

will be executed by the City at the time of issuance of the Bonds. The foregoing covenants have been made in order to assist the Purchaser in complying with the Rule. The City has been and is in compliance with all existing continuing disclosure undertakings in all material respects.

A failure by the City to comply with these covenants must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market.

*Pursuant to Arizona law, the ability of the City to comply with such covenants is subject to annual appropriation of funds sufficient to provide for the costs of compliance with such covenants. Should the City not comply with such covenants due to a failure to appropriate for such purpose, the City has covenanted to provide notice of such fact, prior to and on June 30, 2009, to the NRMSIRs and the SID or a CPO or the MSRB, and after June 30, 2009, through EMMA.*

Absence of continuing disclosure due to a breach of any such covenants or such non-appropriation could affect adversely the Bonds and specifically their market price and transferability.

### **AUDITED ANNUAL FINANCIAL STATEMENTS**

The audited financial statements of the City for the period ended June 30, 2008, a copy of which are included in APPENDIX C – “CITY OF AVONDALE, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2008” of this Official Statement, have been audited by Henry & Horne, LLP, to the extent and for the period indicated in his report thereon. **The City has neither requested nor obtained the consent of Henry & Horne, LLP to include the report and Henry & Horne, LLP has performed no procedures subsequent to rendering his opinion on the financial statements.**

The accounting policies of the City conform to generally accepted accounting principles as applicable to governmental units. For a more detailed summary of significant accounting policies see APPENDIX C which contains the audited financial statements for the City for the fiscal year ended June 30, 2008.

### **CERTIFICATION CONCERNING OFFICIAL STATEMENT**

Documents delivered with respect to the Bonds will include a certificate to the effect that to the knowledge of the City’s Finance Director after appropriate review, this Official Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading and that no event has occurred since date of this Official Statement that should be described herein for the purposes for which this Official Statement is to be used or which it is necessary to disclose herein in order to make the statements and information herein not misleading in any material respect.

CITY OF AVONDALE, ARIZONA

By: \_\_\_\_\_  
Marie Lopez-Rogers, Mayor

**CITY OF AVONDALE, ARIZONA –  
GENERAL ECONOMIC AND DEMOGRAPHIC INFORMATION**

*The following information regarding the City is for reference only. No representation is made as to the relevance of the data to the repayment of the Bonds. The Bonds will be direct obligations of the City, payable solely from ad valorem taxes levied against all taxable property in the City, as described under the heading “SECURITY FOR AND SOURCES OF PAYMENT” in this Official Statement.*

**General**

The City is located approximately 15 miles west of downtown Phoenix in the southwestern portion of the metropolitan Phoenix area and in the central portion of the County, contiguous to the communities of Litchfield Park, Arizona to the north, Phoenix, Arizona to the north and east, Tolleson, Arizona, to the east and Goodyear, Arizona to the north and west. Unique to the City is the convergence of the Gila, Salt and Agua Fria rivers within the City. The City was incorporated in 1946 and is considered one of the fastest growing residential areas in the County.

**POPULATION STATISTICS  
City of Avondale, Arizona**

	<u>City of Avondale</u>	<u>Maricopa County</u>	<u>State of Arizona</u>
2008 Estimate (a)	76,648	3,987,942	6,629,455
2000 Census	35,883	3,072,149	5,130,632
1990 Census	16,169	2,122,101	3,665,339
1980 Census	8,168	1,509,175	2,716,546
1970 Census	6,626	971,228	1,775,399
1960 Census	6,151	663,510	1,302,161

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(a) Data as of July 2008.

Source: U.S. Census Bureau and the Arizona Department of Economic Security, Research Administration Population Statistical Unit.

**Municipal Government and Utilities**

The City operates under a Council-Manager form of government in accordance with its Charter. The Mayor is elected for a four-year term and six council members are elected at large on a non-partisan basis for four-year, staggered terms. The City Council appoints the City Manager who has full responsibility for carrying out Council policy and administering operations for the City. The City Manager in turn appoints department heads. Functions of the City government and operation are provided by a staff of 497 full-time employees.

The City provides its residents with sanitation, water and sewer services. Electricity is provided by both Arizona Public Service Company and Salt River Project. Natural gas is supplied by Southwest Gas Corporation and telephone services are supplied by Qwest Communications, Inc.

**Economy**

The City is developing from an agriculturally based community into a location of commerce and light industry. The City’s economy is a mix of services, retail and manufacturing. The City has two employment corridors that are able to access a labor pool of more than half a million employees within a 30-minute commute. The I-10 Corridor and the Avondale Boulevard Corridor serve the 66-acre Avondale Civic Center and include a 16,000 square foot Hilton Garden Inn complex.

**MAJOR EMPLOYERS  
City of Avondale, Arizona**

Employer	Description	Approximate Number of Employees
Avondale Elementary School District No. 44	Education	775
Agua Fria Union High School District No. 216	Education	725
Estrella Mountain Community College	Education	530
City of Avondale	Government	500
Avondale Dodge Chrysler/Plymouth/Jeep	Car dealership	420
Wal-Mart Stores	Retail	420
Baker Concrete Construction	Concrete	385
Fry’s Food and Drug	Retail	245
Costco	Retail	210
Rudolfo Bros. Plastering	Truss and framing	200
Sam’s Club	Retail	200
SunBridge Healthcare Corp.	Nursing care facility	200
Cummins Rock Mountain LLC	Diesel engine/ parts wholesaler	195
Universal Technical Institute (UTI)	Education	150
Home Depot	Retail	130
Saguaro Transport & Storage	Trucking	130
Vulcan Materials	Concrete	115
Food City	Retail	110
M&V Enterprises	Consulting	100

Source: Estrella Mountain Community College Office of Planning & Institutional Effectiveness, *2009 Arizona Industrial Directory* and *2009 Arizona Services Directory* by Harris Infosource and the Annual Budget & Financial Plan for Fiscal Year 2008/2009 of the City.

The following table illustrates the unemployment averages for the City, the County, the State and the United States of America.

**UNEMPLOYMENT AVERAGES**

Calendar Year	City of Avondale	Maricopa County	State of Arizona	United States of America
2009 (a)	6.6%	6.8%	7.4%	8.1%
2008	4.7	4.8	5.5	5.8
2007	3.1	3.2	3.8	4.6
2006	3.4	3.5	4.1	4.6
2005	3.9	4.0	4.6	5.1
2004	4.2	4.4	4.9	5.5

(a) Data through March 2009.

Source: Arizona Department of Economic Security, Bureau of Statistical Information and Research Analysis, Labor Force Statistical Unit.

**Construction**

The following tables illustrate a building permit summary for residential and non-residential construction and new housing permits for the City.

**VALUE OF BUILDING PERMITS  
City of Avondale, Arizona  
(\$000s omitted)**

<u>Calendar Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Industrial</u>	<u>Other</u>	<u>Total</u>
2008	\$ 32,917	\$ 118,426	\$ 941	\$ 5,330	\$ 157,614
2007	128,908	43,148	5,056	24,335	201,447
2006	177,536	61,961	37,830	11,783	289,110
2005	284,248	86,083	5,880	11,746	387,957
2004	402,893	56,324	2,711	7,295	469,223

Source: Arizona Real Estate Center, Arizona State University. Note that data is obtained from county and municipal divisions which issue such permits. Construction is valued on the basis of estimated cost, not on market price nor value of construction at the time the permit is issued. The issuance of a building permit does not necessarily mean that construction will commence immediately or at all.

**NEW HOUSING STARTS  
City of Avondale, Arizona**

<u>Calendar Year</u>	<u>Total New Housing Starts</u>
2008	371
2007	949
2006	902
2005	1,506
2004	2,232

Source: The City.

**Commerce**

The following table illustrates the past five years of sales tax collections.

**SALES TAX COLLECTIONS  
City of Avondale, Arizona  
(\$000's omitted)**

<u>Fiscal Year</u>	<u>Amount</u>
2007/08	\$37,549
2006/07	42,620
2005/06	39,328
2004/05	35,956
2003/04	22,876

Source: Finance & Budget Department of the City.

## **Tourism**

Phoenix International Raceway, on the southern edge of Avondale away from residential areas, hosts many important auto races each year, including Copperworld Classic, Indy Car and NASCAR, as well as other entertainment activities. Billy Moore Days, named for a colorful character who lived in the City during Arizona's early years, is held in October. Estrella Mountain Regional Park, on the City's southern boundary, has 19,000 acres with an 18-hole golf course as well as camping, horseback riding and picnicking. The 26,000-acre White Tank Mountain Regional Park, to the northwest, features unusual petroglyphs, hiking trails, a waterfall and scenic desert vistas.

## **Transportation**

The Papago Freeway, a segment of Interstate 10, as well as the Loop 101 serve the City. The Loop 101 Freeway connects the north valley to the southwest valley at 99<sup>th</sup> Avenue and Interstate 10 in the City.

Air transportation is provided by both the Phoenix-Goodyear Municipal Airport, located approximately one mile west in Goodyear, Arizona and by the Phoenix Sky Harbor International Airport, located approximately 18 miles east in Phoenix, Arizona. The Union Pacific rail line also runs through the City, providing industrial sites with rail access.

## **Education**

The City is served by five elementary school districts, two high school districts and numerous charter schools. Post-secondary education is provided by the Estrella Mountain Community College with Arizona State University West, Glendale Community College and Thunderbird American Graduate School of International Management located nearby in Phoenix, Arizona and Glendale, Arizona.

CITY OF AVONDALE, ARIZONA –  
FINANCIAL DATA

TABLE B-1

**Current Year Statistics (Fiscal Year 2008/09)**  
**City of Avondale, Arizona**

General Obligation Bonded Debt Outstanding and to be Outstanding	\$ 44,950,000 (a)
Water and Sewer Revenue Bonded Debt Outstanding	12,074,536 (b)
Street and Highway User Revenue Bonded Debt Outstanding	3,085,000
Excise Tax Revenue Bonded Debt Outstanding	74,465,000 (c)
Primary Assessed Valuation	583,884,953 (d)
Secondary Assessed Valuation	704,155,001 (d)
Estimated Net Full Cash Value	5,644,500,029 (e)

*The City's preliminary fiscal year 2009/10 secondary assessed valuation is estimated at \$641,762,977, a decrease of approximately 8.9% from the fiscal year 2008/09 secondary assessed valuation. The City's preliminary fiscal year 2009/10 primary assessed valuation is estimated at \$575,085,351, a 1.5% decrease from the fiscal year 2008/09 primary assessed valuation. The City's preliminary fiscal year 2009/10 estimated net full cash value is estimated at \$4,932,828,426, a 12.6% decrease from the fiscal year 2008/09 estimated net full cash value. Although the final official valuations are not expected to differ materially from the estimated valuations, the valuations are subject to positive or negative adjustments until approved by the Board of Supervisors of the County on August 17, 2009.*

- 
- (a) *Includes the Bonds.*
  - (b) *Does not include the aggregate principal amounts of \$975,100 and \$1,447,591 of the City's Municipal Development Corporation bond issues for Series 1999 and Series 2005, respectively, secured by excise tax revenues but which are paid for by water and sewer revenues. See footnote (a) to TABLE B-5.*
  - (c) *Includes the aggregate principal amounts of \$975,100 and \$1,447,591, respectively, secured by excise tax revenues but which are paid for by water and sewer revenues.*
  - (d) *State property taxes are divided into two categories: primary and secondary. Secondary property taxes are those taxes and assessments imposed to pay principal and interest on bonded indebtedness and certain other obligations, those imposed for special districts other than school districts and those imposed to exceed a budget, expenditure or tax limitation pursuant to voter approval. Primary property taxes are all ad valorem taxes other than secondary property taxes. Annual increases in the valuation of certain types of property for primary property tax purposes and the amount of primary property taxes which may be levied in any year are subject to certain limitations. These limitations do not apply with respect to secondary property taxes. See "PROPERTY TAXES – Ad Valorem Taxes – Property Tax Assessment Ratios" for the method of determination of such categories.*
  - (e) *Estimated net full cash value is the total market value of the property less net exempt property within the District.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue and Property Tax Rates & Assessed Values, Arizona Tax Research Association.*

**STATEMENTS OF BONDED INDEBTEDNESS**

**TABLE B-2**

**General Obligation Bonded Debt Outstanding and to be Outstanding  
City of Avondale, Arizona**

<u>Issue Series</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding and to be Outstanding</u>
1998	\$ 4,300,000	7-1-04/18	\$ 3,165,000
2003A	7,050,000	7-1-04/10	3,105,000
2003B	3,060,000	7-1-04/14	1,825,000
2005	4,145,000	7-1-06/16	3,690,000
2006B	2,500,000	7-1-07/17	1,665,000
Total General Obligation Bonded Debt Outstanding			\$ 13,450,000
Plus: The Bonds			31,500,000
Total Net General Obligation Bonded Debt Outstanding and to be Outstanding			<u>\$ 44,950,000</u>

**TABLE B-3**

**Water and Sewer Revenue Bonded Debt Outstanding  
City of Avondale, Arizona**

<u>Issue Series</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding (a)</u>
1992	\$ 7,500,000	7-1-93/12	\$ 2,864,895
1996	8,940,000	7-1-97/13	3,615,000
1998	6,300,000	7-1-99/18	1,225,000
1999	6,125,000	7-1-02/20	4,369,642
Total Water and Sewer Revenue Bonded Debt Outstanding			<u>\$ 12,074,537</u>

(a) Does not include the aggregate principal amounts of \$975,100 and \$1,447,591 of the City's Municipal Development Corporation bond issues for Series 1999 and Series 2005, respectively, secured by excise tax revenues but which are paid for by water and sewer revenues. See footnote (a) to TABLE B-5.

**TABLE B-4**

**Street and Highway User Revenue Bonded Debt Outstanding  
City of Avondale, Arizona**

<u>Issue Series</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
2005	\$ 3,185,000	7-1-06/17	\$ 3,085,000
Total Street and Highway User Revenue Bonded Debt Outstanding			<u>\$ 3,085,000</u>

**TABLE B-5**

**Excise Tax Revenue Bonded Debt Outstanding  
City of Avondale, Arizona**

<u>Issue Series</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
1999	\$ 11,285,000	7-1-01/11	\$ 2,620,000 (a)
2002	23,000,000	7-1-03/15	8,850,000
2003	13,120,000	7-1-04/15	8,080,000
2004	12,400,000	7-1-05/20	9,940,000
2005	12,850,000	7-1-06/20	12,490,000 (a)
2006	18,500,000	7-1-07/26	17,485,000
2008	15,000,000	7-1-09/28	15,000,000
Total Excise Tax Revenue Bonded Debt Outstanding			<u>\$ 74,465,000</u>

(a) Includes the aggregate principal amounts of \$975,100 and \$1,447,591, respectively, secured by excise tax revenues but which are paid for by water and sewer revenues.

**TABLE B-6**

**Other Indebtedness  
City of Avondale, Arizona**

<u>Item Leased</u>	<u>Periodic Payment</u>	<u>Period Due</u>
HVAC System	\$277,356	Annually through 2013.
Fire Trucks (2)	153,541	Annually through 2012.
Fire Truck	62,305	Annually through 2009.

Source: The City.

**Direct Bonded Debt, Legal Limitation and Unused Borrowing Capacity  
City of Avondale, Arizona**

The Arizona Constitution provides that the general obligation bonded indebtedness for a city or town for general municipal purposes may not exceed six percent (6%) of the secondary assessed valuation of the taxable property in that city or town. In addition to the six percent limitation for general municipal purpose bonds, cities and towns may issue general obligation bonds up to an additional twenty percent (20%) of the secondary assessed valuation for supplying water, artificial light or sewers, and for the acquisition and development of land for open space preserves, parks, playgrounds and recreational facilities, public safety, law enforcement, fire and emergency services facilities and streets and transportation facilities.

**TABLE B-7**

General Municipal Purpose Bonds		Water, Light, Sewer, Open Space, Public Safety, Law Enforcement, Fire and Emergency Services, Park, Street and Transportation Facilities Bonds	
Total 6% General Obligation Bonding Capacity	\$ 42,249,300	Total 20% General Obligation Bonding Capacity	\$ 140,831,000
Less: 6% General Obligation Bonds Outstanding	<u>(1,665,000)</u>	Less: 20% General Obligation Bonds Outstanding	<u>(43,285,000) (a)</u>
Net 6% General Obligation Bonding Capacity	<u><u>\$ 40,584,300</u></u>	Net 20% General Obligation Bonding Capacity	<u><u>\$ 97,546,000</u></u>

(a) Includes the Bonds.

**TABLE B-8**

Overlapping Jurisdiction	General Obligation Bonded Debt (b)	Proportion Applicable to the District (a)	
		Approximate Percent	Net Debt Amount
State of Arizona	None	0.82 %	None
Maricopa County (c)	None	1.21	None
Maricopa County Community College District (d)	\$ 727,390,000	1.21	\$ 8,801,419
Maricopa County Flood Control District (e)	None	1.29	None
Tolleson Elementary School District No. 17	12,040,000	12.27	1,477,308
Avondale Elementary School District No. 44	27,035,000	18.72	5,060,952
Littleton Elementary School District No. 65	14,500,000	59.76	8,665,200
Litchfield Elementary School District No. 79	39,065,000	12.45	4,863,593
Pendergast Elementary School District No. 92	29,225,000	34.69	10,138,153
Tolleson Union High School District No. 214	89,470,000	28.14	25,176,858
Agua Fria Union High School District No. 216	56,120,000	14.47	8,120,564
City of Avondale	44,950,000	100.00	<u>44,950,000</u>
Net Direct and Overlapping General Obligation Bonded Debt			<u>\$ 117,254,046</u>

(a) *Includes total stated principal amount of general obligation bonds outstanding. Does not include presently authorized but unissued general obligation bonds of such jurisdictions which may be issued in the future as indicated in the following table. Additional bonds may be authorized by voters within overlapping jurisdictions pursuant to future elections.*

Overlapping Jurisdiction	General Obligation Bonds Authorized but Unissued
Maricopa Community College District	\$301,093,000
Tolleson Elementary School District No. 17	12,560,000
Avondale Elementary School District No. 44	10,260,000
Littleton Elementary School District No. 65	None
Litchfield Elementary School District No. 79	None
Pendergast Elementary School District No. 92	27,800,000
Tolleson Union High School District No. 214	13,100,000
Agua Fria Union High School District No. 216	8,850,000
City of Avondale (excluding the Bonds)	64,695,000

*Also does not include the obligation of the Central Arizona Water Conservation District (“CAWCD”) to the United States Department of the Interior (the “Department of the Interior”), for repayment of capital costs for construction of the Central Arizona Project (“CAP”), a major reclamation project that has been substantially completed by the Department of the Interior. The obligation is evidenced by a master contract between CAWCD and the Department of the Interior. In April 2003, the United States and CAWCD agreed to settle litigation over the amount of the construction cost repayment obligation, the amount of the respective obligations for payment of the operation, maintenance and replacement costs and the application of certain revenues and credits against such obligations and costs. Under the agreement, CAWCD’s obligation for*

substantially all of the CAP features that have been constructed so far will be set at \$1.646 billion, which amount assumes (but does not mandate) that the United States will acquire a total of 667,724 acre feet of CAP water for federal purposes. The United States will complete unfinished CAP construction work related to the water supply system and regulatory storage stages of CAP at no additional cost to CAWCD. Of the \$1.646 billion repayment obligation, 73% will be interest bearing and the remaining 27% will be non-interest bearing. These percentages will be fixed for the entire 50-year repayment period, which commenced October 1, 1993. Effectiveness of the agreement is subject to a number of conditions including settlement of certain Indian community water claims and other water claims and will require certain Arizona legislation. Federal enabling legislation was passed in 2004. If the conditions are not met by May 9, 2012, and the parties do not amend the agreement, the agreement will terminate and litigation will resume. If it appears prior to May 9, 2012, that the conditions will not be met by the deadline, the parties can amend the agreement or either party may petition the United States District Court to terminate the agreement and resume litigation. CAWCD is a water conservation district having boundaries coterminous with the exterior boundaries of Arizona's Maricopa, Pima and Pinal Counties. It was formed for the express purpose of paying administrative costs and expenses of the CAP and to assist in the repayment to the United States of the CAP capital costs. Repayment will be made from a combination of power revenues, subcontract revenues (i.e., agreements with municipal, industrial and agricultural water users for delivery of CAP water) and a tax levy against all taxable property within CAWCD's boundaries. At the date of this Official Statement, the tax levy is limited to 14 cents per \$100 of secondary assessed valuation, of which ten cents is being levied for fiscal year 2008/09. (See Arizona Revised Statutes, Sections 45-3715 and 48-3715.02.) There can be no assurance that such levy limit will not be increased or removed at any time during the life of the contract that such levy limit will not be increased or removed at any time during the life of the contract.

- (c) Does not include certificates of participation outstanding in the aggregate principal amount of \$3,850,000. Does not include lease revenue bonds outstanding in the aggregate principal amount of \$163,900,000. Does not include county stadium district revenue bonds outstanding in the aggregate principal amount of \$44,270,000.
- (d) Does not include revenue bonds outstanding in the aggregate principal amount of \$15,905,000.
- (e) Does not include obligation to contribute \$70 to \$80 million for the CAP. The Flood Control District's sole source of revenue to pay the contribution will be ad valorem property taxes.

Source: The various entities, Arizona Department of Revenue and *Property Tax Rates and Assessed Values*, Arizona Tax Research Association.

**TABLE B-9**

**Direct and Overlapping General Obligation Bonded Debt Ratios  
City of Avondale, Arizona**

	Per Capita Bonded Debt Population Estimated @ 76,648	As % of City's 2008/09 Secondary Assessed Valuation	As % of City's 2008/09 Estimated Net Full Cash Value
Net Direct General Obligation Bonded Debt	\$ 586.45	6.38%	0.80%
Net Direct and Overlapping General Obligation Debt	1,529.77	16.65	2.08

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Association, *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue and Arizona Department of Economic Security, Research Administration Population Statistical Unit.

## RETIREMENT SYSTEM

### Retirement Benefits

The City's employees are covered by the Arizona State Retirement System (the "ASRS"), a cost-sharing, multiple-employer defined benefit plan. Annual contributions are set by the Arizona Legislature. For fiscal year 2008/09, the City's annual contribution rate is 9.45% of payroll amounts. For fiscal year 2009/10, the City's annual contribution is expected to be 9.40% of payroll amounts. The City is current on its contributions to the ASRS. See Note 7 in APPENDIX C – "CITY OF AVONDALE, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2008" for further discussion of the City's retirement plan.

The City also contributes to the Public Safety Personnel Retirement System (the "PSPRS"), an agent multiple-employer, public employee retirement system that acts as a common investment and administrative agent to provide retirement and death and disability benefits for public safety personnel who are regularly assigned hazardous duty in the employ of the State or a political subdivision, such as City, thereof. For the fiscal year ended June 30, 2008, the City's contribution was 9.68% of payroll amounts for police and 10.57% of payroll amounts for fire.

The City also contributes to the Elected Officials' Retirement Plan (the "EORP"), a multiple-employer cost-sharing defined benefit pension plan administered by the State to provide pension benefits for state and county elected officials, judges and certain elected officials. The State Legislature has the authority to establish and amend benefits, provisions and contributions for active plan members. EORP provides retirement, death and disability benefits. For the fiscal year ended June 30, 2008, the City's contribution was 20.21% of payroll amounts for covered employees.

The City also contributes to the Volunteer Firefighters' Relief and Pension Fund (the "VFRPF"), a defined contribution plan which provides pensions to volunteer firefighters only. The VFRPF is administered by State statute, requiring both the employee and the City to make contributions equal to 5.00% of the employee's compensation. Some monies are also received from the State. After 20 years of service as a volunteer firefighter, he or she is entitled to a monthly pension determined by the board of trustees of the VFRPF in an amount not to exceed \$400. If the volunteer firefighter resigns before completing 20 years of service, he or she is entitled to a refund of his or her contributions only, but not to the City's contributions, amounts received from the State or earnings on any contributions. For the fiscal year ended June 30, 2008, the payroll for employees covered by VFRPF required no contributions.

### Other Post-Employment Retirement Benefits

Beginning with the fiscal year that commences on July 1, 2008, the City was required to implement Government Accounting Standards Board Statement Number 45, *Accounting by Employers for Post-Employment Benefits Other than Pensions* ("GASB 45"), which requires reporting the actuarially accrued cost of post-employment benefits, other than pension benefits ("OPEB"), such as health and life insurance for current and future retirees. GASB 45 requires that such benefits be recognized as current costs over the working lifetime of employees, and to the extent such costs are not pre-funded, GASB 45 will require the reporting of such costs as a financial statement liability.

The City does not offer OPEBs. The City employees, their spouses and survivors may, however, be eligible for certain retiree health care benefits under health care programs provided by the State. Employees on long-term disability and their spouses may also qualify for retiree health care benefits through the State. It is expected that substantially all the City employees that reach normal or early retirement age while working for the City will become eligible for such benefits. Currently, such retirees may obtain the health care benefits offered by the State by paying the applicable health care insurance premium; such plan is available to all participants, whether retired or not, in the State's health care program. It is not the responsibility of the City to fund such costs.

## PROPERTY TAXES

### Tax Years

The State tax year has been defined as the calendar year, notwithstanding the fact that tax procedures, as explained below, begin prior to January 1 of the tax year and continue through May of the succeeding calendar year. The tax lien attaches to the real property as of January 1 of the tax year in question.

### Ad Valorem Taxes

The State has two different valuation bases for levying ad valorem property taxes. They are “limited property” and “full cash” values. Additionally, all property, both real and personal, is assigned a classification to determine its assessed valuation for tax purposes. Each legal classification is defined by property use and has an assessment ratio (a percentage factor) that is multiplied by the limited or full cash value of the property to obtain the assessed valuation. See “Assessment Ratios” herein.

### Assessment Ratios

The appropriate property classification ratio is applied to the full cash value to determine the assessed valuation for such parcel. The current assessment ratios for each class of property are set forth in the following table.

**TABLE B-10**

Property Classification (a)	2005	2006	2007	2008	2009
Mining, Utilities, Commercial and Industrial (b)	25%	24.5%	24%	23%	22%
Agriculture and Vacant Land (b)	16	16	16	16	16
Owner Occupied Residential	10	10	10	10	10
Leased or Rented Residential	10	10	10	10	10
Railroad, Private Car Company and Airline Flight Property (c)	21	22	21	20	18

- (a) *Additional classes of property exist, but seldom amount to a significant portion of a municipal body’s total valuation.*
- (b) *For tax year 2009, full cash values up to \$65,013 on commercial, industrial and agricultural personal property are exempt from taxation. This exemption is indexed annually for inflation. Any portion of the full cash value in excess of that amount will be assessed at the applicable rate. Effective January 1, 2009, the assessment rate on mining, utility, commercial and industrial property was reduced to 22%. Additionally, this rate will be reduced by one percentage point annually through tax year 2010, resulting in an assessment rate of 20% from and after December 31, 2010.*
- (c) *This percentage is determined annually to be equal to the ratio of (i) the total assessed valuation of all mining, utility, commercial, industrial and military reuse zone properties, agricultural personal property and certain leasehold personal property to (ii) the total full cash (market) value of such properties.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue.*

### Determination of Full Cash Value

The first step in the tax process is the determination of the full cash value of each parcel of real property within the State. Most property is valued by the various county assessors, including the Assessor of the County, with the Arizona Department of Revenue valuing centrally assessed properties such as gas, water and electrical utilities,

pipelines, mines, local and long distance telephone companies and airline flight property. Full cash value is statutorily defined to mean “that value determined as prescribed by statute” or if no statutory method is prescribed it is “synonymous with market value.” “Market value” means that estimate of value that is derived annually by use of standard appraisal methods and techniques, which generally include the market approach, the cost approach and the income approach. As a general matter, the Assessor of the County uses a cost approach for commercial/industrial property and a sales data approach for residential property. State law allows taxpayers to appeal such valuations by providing evidence of a lower value, which may be based upon another valuation approach.

The Assessor of the County, upon meeting certain conditions, may value residential, agricultural and vacant land at the same full cash valuation for up to three years. The Assessor of the County currently values existing properties on a two year cycle.

Certain residential property owners sixty-five years of age and older may obtain a property valuation “freeze” against valuation increases (the “Property Valuation Protection Option”) if the owners total income from all sources does not exceed 400% (500% for two or more owners of the same property) of the “Social Security Income Benefit Rate.” The Property Valuation Protection Option must be renewed every three years. If the property is sold to a person who does not qualify, the valuation reverts to its current full cash value. Any freeze on increases in full cash value will, as a result, freeze the secondary assessed value of the affected property as hereinafter described.

### **Primary Taxes**

Taxes levied against the assessed limited property value (after application of the assessment ratio) are referred to as primary taxes, which are used for the maintenance and operation of counties, cities, towns, school districts, community college districts and the State. The State does not currently levy ad valorem taxes. With the exception of personal property (other than mobile homes) and utility, mining and producing oil, gas and geothermal property with limited values equal to full cash values, limited property value cannot exceed the full cash value and is derived statutorily using one of the following two procedures:

- (1) The limited property value for property in existence in the prior year that did not undergo modification through construction, destruction, split or change in use is established at the previous year’s limited property value increased by the greater of either 10% of the previous year’s limited property value or 25% of the difference between the previous year’s limited property value and the current year’s full cash value.
- (2) The limited property value for property that was omitted from the tax roll in the prior year, that underwent a change in use or modification through construction, destruction or demolition or that has been split, subdivided or consolidated is established at a level or percentage of the limited property value to full cash value of existing properties of the same use or legal classification.

The aggregate of the primary taxes levied by a county, city, town and community college district is constitutionally limited to a maximum increase of 2% over the prior year’s levy limit plus any taxes on property not subject to tax in the preceding year (e.g., new construction and property brought into the jurisdiction because of annexation). In November 2006, the maximum allowable primary property tax levy limit was rebased to the amount of actual 2005 primary property taxes levied (plus amounts levied against property not subject to taxation in prior years). The 2% limitation does not apply to primary taxes levied on behalf of school districts.

Primary taxes on residential property only are constitutionally limited to 1% of the full cash value of such property. This constitutional limitation on residential primary tax levies is implemented by reducing the school district’s taxes. To offset the effects of reduced school district property taxes, the State compensates the school district by providing additional State aid in the form of the “State Equalization Assistance Property Tax.” See footnote (a) to TABLE B-12.

### **Secondary Taxes**

Taxes levied against the assessed value (after application of the assessment ratio to the full cash value) are referred to as secondary taxes, which are used for debt retirement (i.e., debt service on the Bonds), voter-approved budget

overrides and the maintenance and operation of special service districts such as sanitary, fire and road improvement districts. There is no limitation on the annual increases in full cash value of any property, and annual levies for voter-approved bond indebtedness and special district assessments are unlimited.

### **Tax Procedures**

On or before the third Monday in August each year the Board of Supervisors of the County approves the tax roll setting forth the valuation by taxing district of all property in the County subject to taxation. This tax roll also shows the valuation and classification of each parcel of land located within the County for the tax year. The tax roll is then forwarded to the Treasurer of the County.

With the various budgetary procedures having been completed by the governmental entities, the appropriate tax rate for each jurisdiction is then applied to the parcel of property in order to determine the total tax owed by each property owner. Any subsequent decrease in the value of the tax roll as it existed on the date of the tax levy due to appeals or other reasons would reduce the amount of taxes received by each jurisdiction.

### **Delinquent Tax Procedures**

The property taxes due the District are billed, along with State and other taxes, each September and are due and payable in two installments on October 1 and March 1 and become delinquent on November 1 and May 1, respectively. Delinquent taxes are subject to an interest penalty of 16% per annum prorated monthly as of the first day of the month. (Delinquent interest is waived if a taxpayer, delinquent as to the November 1 payment, pays the entire year's tax bill by December 31.) After the close of the tax collection period, the Treasurer of the County prepares a delinquent property tax list and the property so listed is subject to a tax lien sale in February of the succeeding year. In the event that there is no purchaser for the tax lien at the sale, the tax lien is assigned to the State, and the property is reoffered for sale from time to time until such time as it is sold, subject to redemption, for an amount sufficient to cover all delinquent taxes.

After three years from the sale of the tax lien, the tax lien certificate holder may bring an action in a court of competent jurisdiction to foreclose the right of redemption and, if the delinquent taxes plus accrued interest are not paid by the owner of record or any entity having a right to redeem, a judgment is entered ordering the Treasurer of the County to deliver a treasurer's deed to the certificate holder as prescribed by law.

In the event of bankruptcy of a taxpayer pursuant to the United States Bankruptcy Code (the "Bankruptcy Code"), the law is currently unsettled as to whether a lien can attach against the taxpayer's property for property taxes levied during the pendency of bankruptcy. Such taxes might constitute an unsecured and possibly non-interest bearing administrative expense payable only to the extent that the secured creditors of a taxpayer are oversecured, and then possibly only on the prorated basis with other allowed administrative claims. It cannot be determined, therefore, what adverse impact bankruptcy might have on the ability to collect ad valorem taxes on property of a taxpayer within the District. Proceeds to pay such taxes come only from the taxpayer or from a sale of the tax lien on delinquent property.

When a debtor files or is forced into bankruptcy, any act to obtain possession of the debtor's estate, any act to create or perfect any lien against the property of the debtor or any act to collect, assess or recover a claim against the debtor that arose before the commencement of the bankruptcy is stayed pursuant to the Bankruptcy Code. While the automatic stay of a bankruptcy court may not prevent the sale of tax liens against the real property of a bankrupt taxpayer, the judicial or administrative foreclosure of a tax lien against the real property of a debtor would be subject to the stay of bankruptcy court. It is reasonable to conclude that "tax sale investors" may be reluctant to purchase tax liens under such circumstances, and, therefore, the timeliness of post bankruptcy petition tax collections becomes uncertain.

It cannot be determined what impact any deterioration of the financial conditions of any taxpayer, whether or not protection under the Bankruptcy Code is sought, may have on payment of or the secondary market for the Bonds. None of the District, the Underwriter nor their respective agents or consultants has undertaken any independent investigation of the operations and financial condition of any taxpayer, nor have they assumed responsibility for the same.

In the event the County is expressly enjoined or prohibited by law from collecting taxes due from any taxpayer, such as may result from the bankruptcy of a taxpayer, any resulting deficiency could be collected in subsequent tax years by adjusting the District's tax rate charged to non-bankrupt taxpayers during such subsequent tax years.

**TABLE B-11**

**Real and Secured Property Taxes Levied and Collected (a)  
City of Avondale, Arizona**

Fiscal Year	District Tax Rate	Adopted District Tax Levy	Adjusted District Tax Levy as of June 30th	Collected to June 30th of Initial Fiscal Year		Adjusted District Tax Levy as of 3/5/09	Cumulative Collections to March 5, 2009	
				Amount	% of Adj. Levy as of June 30th		Amount	% of Adj. Levy as of 3/5/09
2008/09	\$1.1058	\$7,102,059	\$7,084,364	(b)	(b)	\$7,084,364	\$3,912,353	55.23 %
2007/08	1.1058	5,906,911	5,870,299	\$5,639,466	96.07 %	5,844,925	5,836,916	99.86
2006/07	1.1692	4,389,587	4,381,433	4,225,998	96.45	4,366,692	4,363,905	99.94
2005/06	1.1692	3,668,855	3,639,840	3,521,489	96.75	3,626,828	3,624,906	99.95
2004/05	1.1692	2,977,361	2,971,846	2,872,201	96.65	2,944,214	2,943,241	99.97
2003/04	1.1646	2,406,999	2,395,852	2,307,476	96.31	2,372,808	2,372,570	99.99

(a) *Taxes are certified and collected by the Treasurer of the County. Taxes in support of debt service are levied by the Board of Supervisors of the County as required by Arizona Revised Statutes. Delinquent taxes are subject to an interest and penalty charge of 16% per annum, which is prorated at a monthly rate of 1.33%. Interest and penalty collections for delinquent taxes are not included in the collection figures above, but are deposited in the County's General Fund. Interest and penalties with respect to the first half tax collections (delinquent November 1) are waived if the full year's taxes are paid by December 31.*

(b) *2008/09 taxes in course of collection:  
First installment due 10-01-08, delinquent 11-01-08;  
Second installment due 03-01-09, delinquent 05-01-09.*

Source: Office of the Treasurer of the County.

**ASSESSED VALUATIONS AND TAX RATES**

**TABLE B-12**

**Direct and Overlapping Assessed Valuations and Total Tax Rates  
Per \$100 Assessed Valuation**

Overlapping Jurisdiction	2008/09 Secondary Assessed Valuation	2008/09 Primary Assessed Valuation	2008/09 Total Tax Rate Per \$100 Assessed Valuation
State of Arizona	\$ 86,090,579,647	\$ 67,518,882,239	None
Maricopa County	58,303,635,287	44,881,602,698	\$ 1.0327 (a)
Maricopa County Community College District	58,303,635,287	44,881,602,698	0.9386
Maricopa County Fire District (b)	58,303,635,287	N/A	0.0053
Maricopa County Library District (b)	58,303,635,287	N/A	0.0353
Maricopa County Flood Control District (b)	54,626,432,391	N/A	0.1367
Maricopa County Special Health Care District (b)	58,303,635,287	N/A	0.0856
Central Arizona Water Conservation District (b)	58,303,635,287	N/A	0.1000
McMicken Irrigation District (b)	N/A	N/A	0.8914 / Acre
St. Johns Irrigation District (b)	N/A	N/A	73.7599 / Acre
Roosevelt Irrigation District (b)	N/A	N/A	17.1000 / Acre
Western Maricopa Education Center (b)	21,133,088,887	N/A	0.0500
Tolleson Elementary School District No. 17	240,867,096	189,018,476	4.1545
Liberty Elementary School District No. 25	378,576,980	254,192,849	2.7015
Avondale Elementary School District No. 44	527,129,336	399,540,195	3.3473
Littleton Elementary School District No. 65	408,765,710	309,814,929	3.7780
Litchfield Elementary School District No. 79	1,111,725,572	806,931,483	2.5301
Pendergast Elementary School District No. 92	546,773,614	402,051,485	4.9191
Buckeye Union High School District No. 201	1,126,718,380	829,943,931	2.8566
Tolleson Union High School District No. 214	1,647,277,849	1,253,088,480	2.6063
Agua Fria Union High School District No. 216	1,638,854,908	1206471681	2.4081
City of Avondale	704,155,001	583,884,953	1.1058

(a) Includes the "State Equalization Assistance Property Tax," the rate for which was set at \$0.00 for fiscal years 2006/07 through and including 2008/09. The State Equalization Assistance Property Tax in fiscal year 2009/10 will be computed by annually adjusting the fiscal year 2005/06 rate of \$0.4358 through fiscal year 2009/10 pursuant to Arizona Revised Statutes, Section 41-1276.

(b) The assessed valuation of the flood control district does not include the personal property assessed valuation of the County. All levies for fire districts, library districts, flood control districts, special health care districts, water conservation districts, community facilities districts and joint technological districts are levied on the secondary assessed valuation. Valuation shown for the Central Arizona Water Conservation District covers only the County portion of such District.

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Foundation and *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue.

**TABLE B-13****Combined Total Tax Rates Per \$100 Assessed Valuation (a)**

Overlapping Jurisdiction	2008/09 Total Tax Rate Per \$100 Assessed Valuation
Inside the City and inside the:	
Avondale Elementary School District No. 44, Agua Fria Union High School District No. 216 and Western Maricopa Education Center	\$9.2454
Littleton Elementary School District No. 65 and Tolleson Union High School District No. 214	\$9.8243
Litchfield Elementary School District No. 79, Agua Fria Union High School District No. 216 and Western Maricopa Education Center	\$8.4282
Pendergast Elementary School District No. 92, Tolleson Union High School District No. 214 and Western Maricopa Education Center	\$11.0154
Tolleson Elementary School District No. 17 and Tolleson Union High School District No. 214	\$6.7608

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Foundation.

**TABLE B-14****Secondary Assessed Valuation by Property Classification  
City of Avondale, Arizona**

Class	2008/09 Secondary Assessed Valuation	2007/08 Secondary Assessed Valuation	2006/07 Secondary Assessed Valuation	2005/06 Secondary Assessed Valuation	2004/05 Secondary Assessed Valuation
Commercial, Industrial, Utilities & Mines	\$ 179,304,017	\$ 142,205,772	\$ 112,571,195	\$ 84,028,152	\$ 63,047,047
Agricultural and Vacant	59,981,988	48,977,215	38,654,272	31,816,713	34,878,124
Residential (owner occupied)	372,761,407	322,139,304	199,784,255	181,778,769	150,765,648
Residential (rental)	91,692,313	70,127,449	35,453,959	24,736,679	16,239,587
Railroad	415,276	435,213	326,959	315,471	297,703
Totals*	<u>\$ 704,155,001</u>	<u>\$ 583,884,953</u>	<u>\$ 386,790,640</u>	<u>\$ 322,675,785</u>	<u>\$ 265,228,109</u>

\* Totals may not add due to rounding.

Source: *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue and *Property Tax Rates and Assessed Values*, Arizona Tax Research Foundation.

**TABLE B-15**

**Assessed Valuation of Major Taxpayers  
City of Avondale, Arizona**

Major Taxpayer (a)	Description	2008/09 Secondary Assessed Valuation	As % of 2008/09 Secondary Assessed Valuation
Phoenix Speedway Corporation	Racing	\$ 8,574,845	1.22 %
Inland Western Avondale McDowell LLC	Shopping center	7,933,353	1.13
Raintree Pad 2 LLC	Engineering	6,583,678	0.93
Moreland Properties LLC	Auto/truck dealership	5,326,671	0.76
D H Ventures LLC	Hotel	4,555,793	0.65
Smiths Food & Drug Centers Inc.	Shopping center	4,549,019	0.65
Mechanic (AZ) QRS 15-41 Inc.	Developer	4,469,004	0.63
Taylor Woodrow/Arizona Inc.	Developer	4,412,570	0.63
Harkins Phoenix Cinemas LLC	Movie theaters	3,843,634	0.55
Avondale Commerce Center Phase 1 LLC	Industrial property	3,704,104	0.53
		<u>\$ 53,952,671</u>	<u>7.68 %</u>

(a) *Some of such taxpayers or their parent companies are subject to the informational requirements of the Securities Exchange Act of 1934, as amended and in accordance therewith file reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information (collectively, the "Filings") may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and at the Commission's regional offices and Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of the Filings can be obtained from the public reference section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. In addition, the Filings may also be inspected at the offices of the NYSE at 20 Broad Street, New York, New York 10005. The Filings may also be obtained through the Internet on the Commission's EDGAR database at <http://www.sec.gov>. None of the District, Bond Counsel, the Underwriter or counsel to the Underwriter has examined the information set forth in the Filings for accuracy or completeness, nor do they assume responsibility for the same.*

Source: Office of the Assessor of the County.

*SPECIAL NOTE: The assessed valuation of property owned by the Salt River Project Agricultural Improvement and Power District ("SRP") is not included in the assessed valuation of the City in the prior table or in any other valuation information set forth in this Official Statement. Because of SRP's quasi-governmental nature, property owned by SRP is exempt from property taxation.*

*However, SRP may elect each year to make voluntary contributions in lieu of property taxes with respect to certain of its electrical facilities (the "SRP Electric Plant"). If SRP elects to make the in lieu contribution for the year, the full cash value of the SRP Electric Plant and the in lieu contribution amount is determined in the same manner as the full cash value and property taxes owed is determined for similar non-governmental public utility property, with certain special deductions.*

If SRP elected not to make such contributions, the City would be required to levy an increased tax rate on all other taxable property to provide sufficient amounts to pay debt service on the Bonds. If after electing to make the in lieu contribution, SRP then failed to make the in lieu contribution when due, the Treasurer of the County and the City have no recourse against the property of SRP and the City may not have adequate tax collections to pay debt service on the Bonds in full.

Since 1964, when the in lieu contribution was originally authorized in State statute, SRP has never failed to make that election. The fiscal year 2008/09 in lieu assessed valuation of SRP within the City is \$4,078,576, which represents approximately 0.58% of the combined secondary assessed value in the City. The preliminary fiscal year 2009/10 in lieu assessed valuation of SRP within the City is estimated at \$5,457,131, which represents approximately 0.84% of the combined estimated secondary assessed value in the City.

**TABLE B-16**

**Comparison of Secondary Assessed Valuation to Estimated Net Full Cash Value  
City of Avondale, Arizona**

Fiscal Year	Secondary Assessed Valuation	Estimated Net Full Cash Value (a)
2008/09	\$ 704,155,001	\$5,644,500,029
2007/08	583,884,953	4,689,759,903
2006/07	386,790,640	2,970,954,404
2005/06	322,675,785	2,500,804,244
2004/05	265,228,109	2,051,738,576

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(a) *Estimated net full cash value is the total market value of the property within the District less the net exempt property within the District.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue and Property Tax Rates and Assessed Values, Arizona Tax Research Association.*

**CITY OF AVONDALE, ARIZONA**

**AUDITED ANNUAL FINANCIAL STATEMENTS  
FOR THE FISCAL YEAR ENDED JUNE 30, 2008**

The following audited financial statements are for the fiscal year ended June 30, 2008. These are the most recent audited financial statements available to the City. **THESE FINANCIAL STATEMENTS ARE NOT CURRENT AND MAY NOT REPRESENT THE CURRENT FINANCIAL CONDITION OF THE CITY.**

**The District has not requested the consent of Henry & Horne, LLP to include its report and Henry & Horne, LLP has performed no procedures subsequent to rendering its report on the financial statements.**

**APPENDIX D**

**FORM OF APPROVING LEGAL OPINION**

[LETTERHEAD OF GREENBERG TRAURIG, LLP]

[Closing Date]

Mayor and Council of the  
City of Avondale, Arizona  
11465 West Civic Center Drive  
Avondale, Arizona 85323

Re: City of Avondale, Arizona General Obligation Bonds (Projects of 1998 and 2007), Series 2009

We have examined certified copies of the proceedings of the Mayor and Council of the City of Avondale, Arizona (the "City"), and other proofs submitted to us relative to the issuance and sale of

\$31,500,000  
City of Avondale, Arizona  
General Obligation Bonds, (Projects of 1998 and 2007),  
Series 2009  
Dated The Date Hereof  
(the "Bonds")

Bearing interest (payable July 1, 2009, and semiannually thereafter on January 1 and July 1) at the rate per annum, and maturing on July 1 of each year, in the years and amounts, as follows:

<u>Year*</u>	<u>Principal Amount</u> *	<u>Interest Rate</u>
2009	\$1,350,000	%
2010	1,150,000	
2011	1,200,000	
2012	1,100,000	
2013	1,100,000	
2014	1,100,000	
2015	1,300,000	
2016	1,350,000	
2017	1,405,000	
2018	1,460,000	
2019	1,520,000	
2020	1,585,000	
2021	1,660,000	
2022	1,745,000	
2023	1,830,000	
2024	1,925,000	
2025	2,020,000	
2026	2,120,000	
2027	2,230,000	
2028	2,350,000	

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\* *Subject to change.*

Principal on the Bonds being payable at the designated corporate trust office of Zions First National Bank, the Bond Registrar and Paying Agent, and semiannual interest being payable by check mailed to the registered owners thereof, as shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent at the address appearing thereon at the close of business on the 15th day of the calendar month next preceding that interest payment date.

The Bonds maturing before or on July 1, 2019, not being subject to optional redemption prior to their stated date of maturity, and the Bonds maturing on and after July 1, 2020, being subject to optional redemption prior to their stated date of maturity, in whole at any time or in part on any interest payment date, on and after July 1, 2019, in the manner and upon the terms and conditions set forth in Resolution No. \_\_\_\_\_ adopted by the Mayor and Council of the City on \_\_\_\_\_, 2009 (the "Bond Resolution").

In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid proceedings and proofs.

We are of the opinion that such proceedings and proofs show lawful authority for the issuance and sale of the Bonds pursuant to the Constitution and laws of the State of Arizona now in force and particularly the provisions of Title 35, Chapter 3, Article 3, Arizona Revised Statutes, as amended, and that the Bonds are valid and legally binding obligations of the City all of the taxable property within which is subject to the levy of a tax, without limitation as to rate or amount, to pay the principal of and interest on the Bonds.

The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which the City must continue to meet after the issuance of the Bonds in order that interest on the Bonds not be included in gross income for federal income tax purposes. The failure of the City to meet these requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. The Mayor and Council of the City have resolved in the Bond Resolution to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds. (Subject to the same limitations in the last paragraph hereof with respect to such covenants, the City has full legal power and authority to comply with such covenants.) Under existing statutes, regulations, rulings and court decisions, subject to the assumption stated in the last sentence of this paragraph, interest on the Bonds is excludible from the gross income of the owners thereof for federal income tax purposes, and, if the foregoing is the case, the interest on the Bonds is exempt from income taxation under the laws of the State of Arizona. Furthermore, interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and is not taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations. We express no opinion regarding other tax consequences resulting from the ownership, receipt or accrual of interest on, or disposition of, the Bonds. In rendering the opinion expressed above, we have assumed continuing compliance with the tax covenants referred to above that must be met after the issuance of the Bonds in order that interest on the Bonds not be included in gross income for federal tax purposes.

The rights of the holders of the Bonds and the enforceability of those rights may be subject to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights. The enforcement of such rights may also be subject to the exercise of judicial discretion in accordance with general principles of equity.

This opinion represents our legal judgment based upon our review of the law and the facts we deem relevant to render such opinion and is not a guarantee of a result. This opinion is given as of the date hereof, and we assume no obligation to review or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

**APPENDIX E**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

CONTINUING DISCLOSURE UNDERTAKING

\$31,500,000  
CITY OF AVONDALE, ARIZONA  
GENERAL OBLIGATION BONDS (PROJECTS OF 1998 AND 2007),  
SERIES 2009

[BASE CUSIP ID NO. 054314]

This Undertaking is executed and delivered by the City of Avondale, Arizona (hereinafter referred to as the “Issuer”) in connection with the issuance of the captioned municipal securities (hereinafter referred to as the “Securities”) for the benefit of the owners of the Securities, being the registered owners thereof or any person which has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any of the Securities (including persons holding Securities through nominees, depositories or other intermediaries) or is treated as the owner of any of the Securities for federal income tax purposes.

Section 1. Definitions.

“Annual Report” shall mean any annual report provided by the Issuer pursuant to, and as described in, Section 2.

“Central Post Office” shall mean an entity then recognized by the Securities and Exchange Commission as eligible to receive filings and submit such filings to the Repositories for purposes of the Rule. As of the date of this Undertaking, the Central Post Office is:

DisclosureUSA  
P.O. Box 684667  
Austin, Texas 78768-4667  
Fax: (512) 476-6403  
<http://www.disclosureUSA.org>

“EMMA” shall mean the Electronic Municipal Market Access system of the MSRB. As of the date of this Disclosure Undertaking, information regarding submissions to EMMA is available at <http://emma.msrb.org/submission>.

“Listed Events” shall mean any of the events listed in Section 3(a).

“MSRB” shall mean Municipal Securities Rulemaking Board.

“National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule at the time any information is provided as required by this Undertaking. (The Issuer shall contact the Securities and Exchange Commission to determine the National Repositories existing at such time. An updated listing of the National Repositories can be found at <http://www.sec.gov/info/municipal/nrmsir.htm>.) Currently, the following are National Repositories:

Bloomberg Municipal Repository  
100 Business Park Drive  
Skillman, NJ 08558  
E-Mail address: [munis@bloomberg.com](mailto:munis@bloomberg.com)  
(609) 279-3225  
FAX (609) 279-5962

DPC Data Inc.  
One Executive Drive  
Fort Lee, NJ 07024  
E-mail address: nrmsir@dpcdata.com  
(201) 346-0701  
FAX (201) 947-0107

Standard & Poor's Securities Evaluations Inc.  
55 Water Street, 45th Floor  
New York, NY 10041  
E-mail address: nrmsir\_repository@sandp.com  
(212) 438-4595  
FAX (212) 438-3975

Interactive Data and Reference Data, Inc.  
Attn: NRMSIR  
100 William Street  
New York, NY 10038  
E-mail address: nrmsir@ftid.com  
(212) 771-6999  
FAX (212) 771-7390

*The names and addresses of the then-current National Repositories should be verified each time information is delivered pursuant to this Undertaking.*

“Notice of Material Event” shall mean any notice provided by the Issuer pursuant to, and as described in, Section 3.

“Repository” shall mean each National Repository and each State Repository.

“Resolution” shall mean the resolution authorizing the issuance of the Securities.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State Repository” shall mean any public or private repository or entity designated by the State of Arizona and recognized by the Securities and Exchange Commission as such a state repository for purposes of the Rule at the time any information is provided as required by this Undertaking. **(The Issuer shall contact the Securities and Exchange Commission to determine the State Repositories existing at such time.)** Currently, no State Repositories exist for the State of Arizona.

“Tax-exempt” shall mean that interest on the Securities is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax.

Section 2. Contents and Provision of Annual Reports.

(a) (i) ***SUBJECT TO ANNUAL APPROPRIATION TO COVER THE COSTS OF PREPARING AND MAILING THEREFOR, THE ISSUER SHALL, NOT LATER THAN FEBRUARY 1 OF EACH YEAR, COMMENCING FEBRUARY 1, 2010, PROVIDE THROUGH EMMA AN ANNUAL REPORT WHICH IS CONSISTENT WITH THE REQUIREMENTS OF SUBSECTION (b) OF THIS SECTION.***

(ii) ***IF THE ISSUER IS UNABLE OR FOR ANY OTHER REASON FAILS TO PROVIDE AN ANNUAL REPORT OR ANY PART THEREOF BY THE DATE REQUIRED IN SUBSECTION (a)(i) OF THIS SECTION, THE ISSUER SHALL SEND A NOTICE TO THAT EFFECT NOT***

**LATER THAN SUCH DATE THROUGH EMMA ALONG WITH THE OTHER PARTS, IF ANY, OF THE ANNUAL REPORT.**

(b) (i) The Annual Reports shall contain or incorporate by reference the following:

(A) The type of information contained in Tables Nos. B-1, B-2, B-8, B-12 and B-16[??] to the final Official Statement, dated \_\_\_\_\_, 2009, of the Issuer relating to the above captioned Securities.

(B) The audited financial statements of the Issuer for the preceding fiscal year prepared in accordance with generally accepted accounting principles, as modified by State law, as described in Note 1, Notes to the Financial Statements For the Fiscal Year Ended June 30, 2008, of the Issuer attached as Appendix D to the final Official Statement, dated \_\_\_\_\_, 2009, of the Issuer relating to the above-captioned Securities. *IF THE FISCAL YEAR OF THE ISSUER CHANGES, THE ISSUER SHALL FILE A NOTICE OF SUCH CHANGE IN THE SAME MANNER AS FOR A NOTICE OF MATERIAL EVENT.*

(ii) The Annual Report may be submitted as a single document or as separate documents comprising a package and may incorporate by reference from other documents other information, including official statements of debt issues of the Issuer or related public entities which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so incorporated by reference.

(iii) *If audited financial statements are to be included in an Annual Report but are not available in time to satisfy the requirements of Subsection (a)(i) of this Section, unaudited financial statements must be provided at the requisite time as part of the Annual Report and as soon as possible (but not later than thirty (30) days) after such audited financial statements become available, the audited financial statements shall be provided to each Repository.*

Section 3. Reporting of Significant Events.

(a) This Section shall govern the giving of notices of the occurrence of any of the following events (the "Listed Events") with respect to the Securities:

- (i) Principal and interest payment delinquencies.
- (ii) Non-payment related defaults.
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (v) Substitution of credit or liquidity providers or their failure to perform.
- (vi) Adverse tax opinions or events affecting the tax-exempt status of the Securities (including particularly, but not by way of limitation,

(A) Receipt of an opinion of nationally recognized bond counsel to the effect that interest on the Securities is not Tax-exempt or

(B) Any event adversely affecting the Tax-exempt status of the Securities, including but not limited to:

(I) Any non-random audit, investigation or other challenge of the Tax-exempt status of the Securities by the Internal Revenue Service or in any administrative or judicial proceeding or

(II) The issuance of any regulation, decision or other official pronouncement by the Internal Revenue Service or other official tax authority or by any court adversely affecting the tax-exempt status of the Securities or securities of the same type as the Securities or financing structures of the same type as financed by the Securities).

(vii) Modifications to rights of holders (i.e., owners).

(viii) Bond calls (which are other than mandatory or scheduled redemptions, not otherwise contingent upon the occurrence of an event).

(ix) Defeasances.

(x) Release, substitution or sale of property securing repayment of the Securities (including property leased, mortgaged or pledged as such security).

(xi) Rating changes.

(b) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, the Issuer shall as soon as possible determine if such event would constitute material information for owners of the Securities as interpreted pursuant to the Securities Exchange Act of 1934, as amended; provided, however, that any event under Subsection (a)(viii), (ix) or (xi) of this Section shall always be deemed to be material.

(c) ***IF KNOWLEDGE OF THE OCCURRENCE OF A LISTED EVENT WOULD BE MATERIAL, BUT SUBJECT TO ANNUAL APPROPRIATION TO COVER THE COSTS OF PREPARING AND MAILING THEREFOR, THE ISSUER SHALL PROMPTLY FILE A NOTICE OF MATERIAL EVENT OF SUCH OCCURRENCE BEFORE AND ON JUNE 30, 2009, WITH THE MUNICIPAL SECURITIES RULEMAKING BOARD AND EACH REPOSITORY, AND, AFTER JUNE 30, 2009, THROUGH EMMA.*** Notwithstanding the foregoing, a Notice of Material Event of the Listed Events described in Subsections (a)(viii) and (ix) need not be given under this Subsection any earlier than the notice (if any) of the underlying event given to owners of Securities affected pursuant to the Resolution.

Section 4. Alternate Means of Disclosure. Notwithstanding the provisions hereof requiring that the Issuer file the Notices of Material Events and certain other notices with each of the Repositories, for so long as there is a Central Post Office, the Issuer may instead comply with the provisions of this Undertaking by filing the Annual Reports and such notices with a Central Post Office.

Section 5. Termination of Reporting Obligation. (a) The obligations of the Issuer pursuant to this Undertaking shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Securities. ***NOTICE OF SUCH TERMINATION SHALL BE GIVEN BEFORE AND ON JUNE 30, 2009, TO EACH REPOSITORY AND TO THE MUNICIPAL SECURITIES RULEMAKING BOARD, AND, AFTER JUNE 30, 2009, THROUGH EMMA, AS SOON AS PRACTICABLE, BUT NOT LATER THAN THE DATE AN ANNUAL REPORT WOULD OTHERWISE HAVE BEEN DUE.***

(b) The obligations of the Issuer pursuant to this Undertaking shall also terminate with respect to any year upon the failure of the Issuer to appropriate amounts necessary for compliance herewith in that year. ***NOTICE OF SUCH FAILURE SHALL BE GIVEN IN EACH YEAR BEFORE AND ON JUNE 30, 2009, TO EACH REPOSITORY AND TO THE MUNICIPAL SECURITIES RULEMAKING BOARD, AND, AFTER JUNE 30, 2009, THROUGH EMMA, TO THAT EFFECT NOT LATER THAN THE DATE OF THE OCCURRENCE OF SUCH FAILURE TO APPROPRIATE.*** Thereafter, if the Issuer appropriates for such purposes for any subsequent year, such appropriation must include amounts sufficient to provide for compliance herewith for such years for which amounts were not appropriated.

(c) To the extent applicable by provision of law, this Undertaking is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

Section 6. Amendment or Waiver.

(a) Notwithstanding any other provision of this Undertaking, the Issuer may amend this Undertaking, and any provision of this Undertaking may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws, to the effect that (i) such amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Issuer or type of business conducted; (ii) the Undertaking, as amended or affected by such waiver, would have complied with the requirements of the Rule at the time of the primary offering of the Securities, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances and (iii) such amendment or waiver does not materially impair the interests of the owners of the Securities, as determined either by parties (such as the bond counsel) unaffiliated with the Issuer or by an approving vote of the registered owners of the Securities pursuant to the terms of the Resolution at the time of the amendments.

(b) The Annual Report containing amended operating data or financial information resulting from such amendment or waiver, if any, shall explain, in narrative form, the reasons for the amendment or waiver and the impact of the change in the type of operating data or financial information being provided. If an amendment or waiver is made specifying the accounting principles to be followed in preparing financial statements, the Annual Report for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information in order to provide information to investors to enable them to evaluate the ability of the Issuer to meet its obligations. To the extent reasonably feasible, such comparison also shall be quantitative. ***IF THE ACCOUNTING PRINCIPLES OF THE ISSUER CHANGE, THE ISSUER SHALL FILE A NOTICE OF SUCH CHANGE IN THE SAME MANNER AS FOR A NOTICE OF MATERIAL EVENT.***

Section 7. Additional Information. Nothing in this Undertaking shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Report or Notice of Material Event, in addition to that which is required by this Undertaking. If the Issuer chooses to include any information in any Annual Report or Notice of Material Event in addition to that which is specifically required by this Undertaking, the Issuer shall have no obligation under this Undertaking to update such information or include it in any future Annual Report or Notice of Material Event.

Section 8. Default. In the event of a failure of the Issuer to comply with any provision of this Undertaking, any owner of a Security for the benefit of which this Undertaking is being provided may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an event of default for other purposes of the Resolution, and the sole remedy under this Undertaking in the event of any failure of the Issuer to comply with this Undertaking shall be an action to compel performance.

Section 9. Beneficiaries. This Undertaking has been executed in order to assist the participating underwriters in complying with the Rule; however, this Undertaking shall inure solely to the benefit of the Issuer and the owners of the Securities as hereinabove described, and shall create no rights in any other person or entity.

Section 10. Recordkeeping. The Issuer shall maintain records of all Annual Reports and Notices of Material Events including the content thereof, the names of the entities with which filed and the date of filing thereof.

DATED: [Closing Date]

CITY OF AVONDALE, ARIZONA

By.....  
Mayor

ATTEST

.....  
Clerk

APPROVED AS TO FORM:

.....  
City Attorney

### BOOK-ENTRY-ONLY SYSTEM

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Securities Clearing Corporation, all of which are registered clearing agents. DTC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: “AAA.” The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial

Owners may wish to provide their names and addresses to the Bond Registrar and Paying Agent and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Bond Registrar and Paying Agent as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payment of principal of and interest on the Bonds and the redemption price of any Bond will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Bond Registrar and Paying Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Bond Registrar and Paying Agent or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of and interest on the Bonds and the redemption price of any Bonds will be made to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or Bond Registrar and Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the District or the Bond Registrar and Paying Agent. Under such circumstances, in the event that a successor depository is not obtained, certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

**RESOLUTION NO. 2827-609**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ORDERING THE SALE OF CITY OF AVONDALE, ARIZONA GENERAL OBLIGATION BONDS (PROJECTS OF 1998 AND 2007), SERIES 2009 IN THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF \$31,500,000, FIXING THE DATE AND HOUR OF SALE AND AUTHORIZING THE PREPARATION, USE AND DISTRIBUTION OF AN OFFICIAL STATEMENT RELATING TO BONDS

**BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That \$31,500,000 principal amount of General Obligation Bonds (Projects of 1998 and 2007), Series 2009 (the "Bonds"), of the City of Avondale, Arizona (the "City"), which were voted on at special bond elections held in the City on September 8, 1998, and May 15, 2007, shall be offered for public sale by the City on the date and at the hour set forth in the official notice of sale of the Bonds, which notice shall be substantially in the form attached hereto and may be finalized by the Finance & Budget Director of the City.

SECTION 2. That the Finance & Budget Director of the City, on behalf of the City and in his official capacity, is hereby authorized to finalize the preliminary official statement for the Bonds, the form of which was presented to the Council of the City of Avondale (the "City Council") at the meeting at which this Resolution was adopted and which is hereby approved, "deemed final" (except for permitted omissions) by the City Council as of its date for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, and authorized to be used and distributed in connection with the original sale of the Bonds.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2009.

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Marie Lopez Rogers, Mayor

ATTEST:

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Carmen Martinez, City Clerk

APPROVED AS TO FORM:

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Andrew J. McGuire, City Attorney

## CERTIFICATION

I hereby certify that the foregoing Resolution No. 2827-609 was duly passed and adopted by the Mayor and the Council of the City of Avondale, Arizona, at a regular meeting held on the 1st day of June, 2009, and the vote was \_\_ ayes and \_\_ nays and that the Mayor and \_\_ Councilmembers were present thereat.

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Carmen Martinez, Clerk, City of Avondale, Arizona

ATTACHMENT  
TO  
RESOLUTION NO. 2827-609

(Form of Notice of Sale)

See following pages.

FORM OF NOTICE OF SALE

\$ \_\_\_\_\_,  
**CITY OF AVONDALE, ARIZONA  
GENERAL OBLIGATION BONDS  
(PROJECTS OF 1998 AND 2007),  
SERIES 2009**

**NOTICE INVITING PROPOSALS  
FOR PURCHASE OF BONDS**

**(Electronic Proposals Only)**

NOTICE IS HEREBY GIVEN that unconditional proposals will be received to and including the hour of 10:00 a.m., Mountain Standard Time (“MST”), on Monday, June 15, 2009, through the facilities of PARITY® for the purchase of bonds of the City of Avondale, Arizona (the “City”), in the principal amount of \$ \_\_\_\_\_, to be designated “City of Avondale, Arizona General Obligation Bonds (Projects of 1998 and 2007), Series 2009” (the “Bonds”). The Mayor and Council of the City will meet at the hour of 7:00 P.M. MST, on Monday, June 15, 2009, for the purpose of considering proposals received and, if an acceptable proposal is received, awarding the contract for the purchase of the Bonds.

A proposal may be submitted only through the facilities of PARITY®. The time maintained by PARITY® shall constitute the official time. Submission of proposals is further discussed under the heading “ELECTRONIC PROPOSAL PROCEDURES.”

The City may continue the date for receipt of proposals. If the date for receipt of proposals is continued, prior to 10:00 a.m. MST on Monday, July 6, 2009, or prior to 10:00 a.m. MST on the day prior to the date to which receipt of proposals has been continued, the City will give notice of the continuance by PARITY® at [www.ipreo.com](http://www.ipreo.com).

**DESIGNATION BY BIDDER:** The City is offering the Bonds all as tax-exempt obligations (the “Tax-Exempt Bonds”) or all as taxable obligations which the City will elect to designate as “Qualified Build America Bonds (Direct Pay)” (the “Taxable Bonds”). An entity submitting a proposal may propose to purchase all of the Bonds as the Tax-Exempt Bonds or all of the Bonds as the Taxable Bonds. An entity may submit separate alternate proposals for all of the Tax-Exempt Bonds and all of the Taxable Bonds. If the Bonds are issued as the Taxable Bonds, they will be designated “Taxable General Obligation Bonds (Projects of 1998 and 2007), Series 2009.” See with regard to the foregoing “PREMIUM LIMITS.”

If issued as Taxable Bonds, the City will elect to receive directly subsidy payments from the United States of America. The owners of, and the owners of beneficial interests in, the Taxable Bonds will not receive any tax credit with respect to the Taxable Bonds.

**BONDS, IN GENERAL:** The Bonds will be dated the date of initial authentication and delivery and will bear interest from such date to the maturity of each of the Bonds at a rate or rates per annum of not to exceed nine percent (9%). Interest on the Bonds will be payable

semiannually on January 1 and July 1 commencing January 1, 2009. The Bonds will mature on July 1 in the years 2009 to 2028, inclusive, in the principal amounts as follows:

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>
....	\$.....	....	\$.....
....	.....	....	.....
....	.....	....	.....
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As described below under the heading “TERM BONDS AND MANDATORY REDEMPTION,” those submitting proposals may specify that the principal amount of serial Bonds scheduled to mature after July 1, 2020, shall be combined into one or more term Bonds. Serial Bonds converted to term Bonds, as specified, must bear the same rate of interest.

The Bonds, when issued, will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository for the Bonds through its book-entry system (the “Book-Entry Only System”). Purchases of beneficial ownership interests in the Bonds will be made in book-entry form in amounts of \$5,000 of principal amount due on a specific maturity date or any integral multiple thereof. Purchasers will not receive certificates representing their beneficial interests in the Bonds. See the information contained herein under the caption “BOOK-ENTRY ONLY SYSTEM.” The principal of and interest on the Bonds will be paid by Zions First National Bank, as the bond registrar and paying agent (the “Bond Registrar and Paying Agent”) for the Bonds, to Cede & Co., as long as Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to the DTC Participants is the responsibility of DTC, and disbursement of such payments to the purchasers of beneficial ownership interests in the Bonds is the responsibility of DTC Participants and Indirect Participants, as more fully described in the preliminary official statement relating to the Bonds (the “Preliminary Official Statement”).

**ELECTRONIC PROPOSAL PROCEDURES:** Proposals may be submitted only through the facilities of PARITY®. Proposals must be submitted on the Official Proposal Form that resides on the PARITY® system, without alteration or interlineation. Subscription to Impreo’s PARITY® Electronic Bid Submission is required in order to submit a proposal. The City will neither confirm any subscription nor be responsible for the failure of any prospective proposer to subscribe. The City is using PARITY® as a communications media and not as the agent of the City to conduct electronic bidding for the Bonds.

All proposals made through the facilities of PARITY® shall be deemed irrevocable offers to purchase the Bonds on the terms provided in this Notice Inviting Proposals for the

Purchase of Bonds and shall be binding upon the entity making the proposal. Neither the City nor Stone & Youngberg LLC, Financial Advisor to the City (the “Financial Advisor”) shall be responsible for any malfunction or mistake made by, or as result of the use of the facilities of, PARITY®, the use of such facilities being the sole risk of the prospective proposer.

If any provisions of this Notice Inviting Proposals for the Purchase of Bonds shall conflict with information provided by PARITY®, as the online system provider, this Notice Inviting Proposals for the Purchase of Bonds shall control. Further information about PARITY®, including any fee charged, may be obtained from PARITY®, 1359 Broadway, New York, New York 10018, Attn: Customer Support (212) 849-5000.

Proposers are requested to state in their proposals the true interest cost to the City as described under the heading “AWARD AND DELIVERY.” All proposals shall be deemed to incorporate this Notice Inviting Proposals for the Purchase of Bonds in the Official Proposal Form.

Each proposer shall be solely responsible for making necessary arrangements to access PARITY® for purposes of submitting its electronic proposal in a timely manner and in compliance with the requirements of this Notice Inviting Proposals For Purchase of Bonds. None of the City, the Financial Advisor nor the entities which control PARITY® shall have any duty or obligation to provide or assure such access to any proposer, and none of the City, the Financial Advisor nor the entities which control PARITY® shall be responsible for proper operation of, or have any liability for, any delays or interruptions of, or any damages caused by, PARITY®.

Only Financial Industry Regulatory Authority registered broker-dealers and dealer banks with DTC clearing arrangements will be eligible to submit proposals for the Bonds.

**BOOK-ENTRY-ONLY SYSTEM:** DTC (and, together with any successor securities depository for the Bonds, a “Securities Depository”) will act as Securities Depository for the Bonds and the ownership of one fully registered Bond for each maturity of the Bonds will be registered in the name of Cede & Co., as nominee for DTC. For a description of the method of payment of debt service on the Bonds and matters pertaining to transfers and exchanges and providing of notices while the Book-Entry Only System is in place, see the information in the Preliminary Official Statement in Appendix F - “BOOK-ENTRY ONLY SYSTEM.” So long as Cede & Co. is the registered owner of the Bonds, as nominee of DTC, references herein to the holders or registered owners of the Bonds will mean Cede & Co. and will not mean the Beneficial Owners (as defined in Appendix F - “BOOK-ENTRY ONLY SYSTEM” in the Preliminary Official Statement) of the Bonds. The City and the Bond Registrar and Paying Agent may treat the person in whose name a Bond is registered as the absolute owner thereof for all purposes and shall not be affected by any notice to the contrary. The Bond Registrar and Paying Agent will keep the bond registration books for the Bonds at its designated corporate trust office.

**AUTHORITY AND PURPOSE:** The Bonds will be issued pursuant to the Constitution and laws of the State of Arizona, including particularly Title 35, Chapter 3, Article 3, Arizona Revised Statutes, as amended, and a resolution (the “Bond Resolution”) to be adopted by the

Mayor and Council of the City on June 15, 2009, unless the sale thereof is continued as indicated hereinabove and then such resolution will be adopted on a date provided at the time of such continuance (the "Bond Resolution"). The Bonds are being issued for the purpose of providing money to finance the improvements and other purposes described in the Preliminary Official Statement. The Bonds were authorized by the qualified electors of the City voting at special bond elections held on September 8, 1998, and May 15, 2007.

**SECURITY AND SOURCES OF PAYMENT:** The principal of and interest on the Bonds will be payable from an *ad valorem* tax levied against all of the taxable property of the City. The Bonds will be payable from such tax without limit as to rate or amount. The Mayor and Council of the City will be obligated to levy annually an ad valorem tax for payment of the principal of and interest on the Bonds upon all the taxable property within the City without limitation as to rate or amount.

**OPTIONAL REDEMPTION:** The Bonds maturing before or on July 1, 2020, will not be subject to redemption prior to maturity. The Bonds maturing on or after July 1, 2019, will be subject to redemption prior to maturity, at the option of the City, in whole or in part, on July 1, 2020, or on any interest payment date thereafter, by the payment of a redemption price equal to the principal amount of each Bond redeemed plus interest accrued to the date fixed for redemption without premium.

**TERM BONDS AND MANDATORY REDEMPTION:** An entity submitting a proposal may specify that the principal amount of serial Bonds scheduled to mature in one or more of the years 2020, through 2034, inclusive, shall be combined into one or more term Bonds maturing in the years as specified, which are subject to mandatory redemption, by lot, selected by the Bond Registrar and Paying Agent annually until payment at maturity in the principal amounts shown in the maturity schedule above at par and accrued interest to the date fixed for redemption, without premium. If so specified, then serial Bonds converted into a single term Bond must bear the same rate of interest.

**NOTICE OF REDEMPTION:** Notices of redemption will be sent only to DTC by mail, facsimile, wire or other generally accepted electronic means not more than forty-five (45) nor less than thirty (30) days prior to the date set for redemption. Failure to properly give notice of redemption shall not affect the redemption of any Bond for which notice was properly given.

**BOND INSURANCE:** A proposer may obtain municipal bond insurance at its option and expense. The City will cooperate with the purchaser of the Bonds with respect to such bond insurance.

**INTEREST RATES; FORM OF PROPOSAL; FINANCIAL ADVISOR'S RIGHT TO SUBMIT PROPOSAL:** Proposals for the purchase of the Bonds must state the rate or rates of interest to be paid, and no proposal at a price less than the par value of the Bonds will be considered. All Bonds of the same maturity must bear the same rate of interest. The highest rate proposal shall not exceed the lowest rate by more than two percent (2.0%) per annum. Proposals must be expressed in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1.0%). Interest will be calculated on the basis of a year comprised of 360 days consisting of twelve (12) months of thirty (30) days each.

Any interest rate proposal which would result in an interest payment amount having fractional cents will be deemed a waiver of the right to payment of such fractional cents. No fractional cents will be paid or accumulated for payment on any Bond.

No proposal offering to purchase less than all of the Bonds will be considered.

The Financial Advisor reserves the right and has been granted approval by the City to submit a proposal for the Bonds.

**PREMIUM LIMITS:** The Bonds may not be reoffered to produce a net premium (as such term is hereinafter defined) associated with the Bonds in excess of \$\_\_\_\_\_. The term “net premium” means the difference between \$\_\_\_\_\_ (the par amount of the Bonds) and the issue price of the Bonds determined pursuant to United States Treasury Regulations.

Also, each proposal for all of the Bonds as the Taxable Bonds must specify the expected reoffering price for each maturity of the Taxable Bonds, and each such reoffering price cannot exceed the par amount of the maturity by more than .25% multiplied by the number of complete years to the earlier of the maturity date or the first optional redemption date for the maturity of the Taxable Bonds. For the Taxable Bonds, this limit equals 2.5% for each maturity.

The issue price of the Bonds will be the aggregate of the issue price of each maturity of the Bonds. The issue price of each maturity of the Bonds will be the initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount of Bonds of that maturity (at least ten percent (10%) of such maturity) are reasonably expected to be sold as of the date of the award.

**INFORMATION TO BE PROVIDED BY PURCHASER; CANCELLATION OF AWARD AND FORFEITURE OF DEPOSIT:** The purchaser of the Bonds will be required to furnish to the City (a) if proposing to purchase all of the Bonds as the Taxable Bonds, with the proposal, and (b) if proposing to purchase all of the Bonds as the Tax-Exempt Bonds, within twenty-four (24) hours after the award of the Bonds, a certificate in a form acceptable to the City and to Bond Counsel (as such term is hereinafter defined) stating that a bona fide public offering of the Bonds has been made and setting forth the offering prices at which a substantial amount of the Bonds of each maturity is reasonably expected to be sold to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) as of the date of the award. If the offering prices so certified cause the net premium to exceed \$\_\_\_\_\_, the award will be canceled, the Bonds will not be delivered to such entity and the Deposit (as described below) will be retained by the City and forfeited as liquidated damages. (The foregoing information will also be used to enable the City to compute the yield on the Bonds for federal income tax purposes.)

**RIGHT OF REJECTION:** The Mayor and Council of the City reserve the right to reject any and all proposals and to waive any irregularity or informality in any proposal, except that the time for receiving proposals shall be of the essence.

**AWARD AND DELIVERY:** Unless all proposals are rejected, or the sale of the Bonds is continued, the City, at the scheduled meeting of the Mayor and Council of the City, will award the Bonds not later than 11:59 p.m., MST, on such date to the responsible proposer offering to purchase all of the Bonds at the lowest net interest cost to the City, which shall be determined by computing the aggregate amount of interest payable on the Bonds from their date to their respective maturity date and by deducting therefrom any premium and treating the payment from the United States to the City if the Bonds are all issued as the Taxable Bonds as a 35% reduction in each interest payment. (See “INTEREST RATES/FORM OF PROPOSAL” and “INFORMATION TO BE PROVIDED BY PURCHASER; CANCELLATION OF AWARD AND FORFEITURE OF DEPOSIT.”) Delivery of the Bonds will be made to the purchaser upon payment in federal or immediately available funds at the offices of Greenberg Traurig, LLP, Phoenix, Arizona (“Bond Counsel”), or, at the purchaser’s request and expense, at any other place mutually agreeable to both the City and the winning proposer. It is expected that delivery will be made on or about June \_\_\_\_, 2009.

**CANCELLATION UNDER STATE LAW:** Proposers are to take notice that, pursuant to Arizona law, if within three years from the award of the contract for the purchase of the Bonds any person who was significantly involved in initiating, negotiating, securing, drafting or creating a contract for the purchase of the Bonds on behalf of the City becomes an employee or agent of the purchaser of the Bonds in any capacity or a consultant to the purchaser of the Bonds with respect to the contract for the purchase of the Bonds, the City may cancel the award of the contract without penalty or further obligation by the City and refuse to deliver the Bonds to the purchaser of the Bonds. In addition to such cancellation, if such person becomes an employee or agent of the purchaser of the Bonds with respect to the contract for the purchase of the Bonds, the City may recoup any fees or commissions paid or due to the purchaser of the Bonds with respect to the award to said purchaser and the actual sale of the Bonds.

**GOOD FAITH DEPOSIT:** All proposals must be covered by a financial surety bond for the amount of the Deposit from an insurance company licensed to issue such a bond in the State of Arizona, and such bond must be submitted to the Financial Advisor prior to the opening of the proposals. The financial surety bond must identify each proposer, the Deposit for which is guaranteed by such financial surety bond. A certified check or wire transfer in the amount of \$\_\_\_\_\_, payable to the order of the City (the “Deposit”), must be submitted by the purchaser of the Bonds, as instructed by the Financial Advisor, not later than 1:00 p.m. MST on the next business day following the award. If the Deposit is not received by that time, the financial surety bond may be drawn on by the City to satisfy the Deposit. The Deposit will be applied to the purchase price of the Bonds or retained and forfeited as liquidated damages in the event the purchaser of the Bonds does not take up and pay for the Bonds immediately upon their issuance or for the reason described under the heading “INFORMATION TO BE PROVIDED BY PURCHASER; CANCELLATION OF AWARD AND FORFEITURE OF DEPOSIT.” No interest will be paid on the Deposit.

**LEGAL OPINION:** The Bonds will be sold with the understanding that the City will furnish the purchaser with the approving opinion of Bond Counsel. Bond Counsel has been retained by the City as Bond Counsel and, in such capacity, will render their opinion only upon the legality of the Bonds under Arizona law and on the exemption of the interest income on the Tax-Exempt Bonds from federal and State of Arizona income taxes, the delivery of said opinion

being a condition precedent to the delivery of the Bonds and the purchase thereof by the purchaser of the Bonds. (See "TAX EXEMPTION.") The fees of Bond Counsel will be paid from the proceeds of the sale of the Bonds. Except to the extent necessary to issue its approving opinion as to validity of the Bonds, Bond Counsel has not been requested to examine or review and has not examined or reviewed any financial documents, statements or materials that have been or may be furnished in connection with the authorization, issuance or marketing of the Bonds and accordingly will not express any opinion with respect to the accuracy or completeness of any such financial documents, statements or materials. In submitting a proposal for the Bonds, each entity submitting a proposal for the purchase of Bonds agrees to the representation of the City by Bond Counsel.

**TAX EXEMPTION:** The Internal Revenue Code of 1986, as amended (the "Code"), contains a number of requirements and restrictions would apply to the Tax-Exempt Bonds, including investment restrictions, periodic payments of certain investment earnings to the United States, requirements regarding the proper use of bond proceeds and the facilities financed therewith and certain other matters. The Bond Resolution will include provisions which, if complied with by the City, will meet the requirements of the Code. Failure to comply with certain of such Bond Resolution provisions may cause interest on the Tax-Exempt Bonds to become subject to federal income taxation retroactive to the date of issuance of the Tax-Exempt Bonds.

Assuming compliance by the City with the provisions of the Bond Resolution, in the opinion of Bond Counsel, interest on the Tax-Exempt Bonds will not be, under current law, includable in gross income of the owners thereof for federal income tax purposes, and therefore will be exempt from present federal income taxation, except to the extent that such interest will be taken into account in computing the "branch profits tax" imposed on certain foreign corporations as described below, and is exempt from present Arizona income taxation. Interest on the Tax-Exempt Bonds will not be treated as an item of tax preference in computing the federal alternative minimum tax for individuals and corporations and will not be taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations.

Under the provisions of Section 884 of the Code, a branch profits tax may be levied (for taxable years beginning after December 31, 1986) on the "effectively connected earnings and profits" of certain foreign corporations, which include tax-exempt interest such as interest on the Tax-Exempt Bonds.

Individuals receiving benefits under the Social Security Act or the Railroad Retirement Act may be required to treat specially the interest received on the Tax-Exempt Bonds in particular circumstances specified in the Code.

If a Tax-Exempt Bond is purchased hereafter at any time for a price that is less than the stated redemption or payment price at maturity or, if issued with original issue discount, the "issue price" plus accreted original issue discount, the purchaser will be treated as having purchased an obligation with, unless certain exceptions apply, market discount subject to the market discount rules of the Code. Accrued market discount is treated as taxable ordinary income and is recognized when an obligation is disposed of (to the extent such accrued discount

does not exceed gain realized) or, at the purchaser's election, as it accrues. The applicability of the market discount rules may adversely affect the liquidity or secondary market price of such obligation. Purchasers should consult their own tax advisors regarding the potential implications of market discount with respect to the Tax-Exempt Bonds.

In rendering its opinion, Bond Counsel will rely upon certifications of the City with respect to certain material facts solely within the knowledge of the City relating to, among other things, the application of proceeds of the sale of the Tax-Exempt Bonds as well as to certain provisions of the Bond Resolution, sale of the Tax-Exempt Bonds and certain other matters. If such certifications prove untrue, it is possible that interest related to the Tax-Exempt Bonds could lose its tax-exempt status. The Tax-Exempt Bonds do not provide for an adjustment in interest rate or yield in the event of taxability, and the event of taxability does not cause an acceleration of the principal of the Tax-Exempt Bonds.

Ownership of tax-exempt obligations such as the Tax-Exempt Bonds may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry tax-exempt obligations. Prospective purchasers of the Tax-Exempt Bonds should consult their tax advisors as to applicability of any such collateral consequences.

From time to time, there are legislative proposals in Congress which, if enacted could alter or amend the federal tax matters referred to above or affect adversely the market value of the Tax-Exempt Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to obligations (such as the Tax-Exempt Bonds) issued prior to enactment.

**CERTIFICATES TO BE DELIVERED:** The City will deliver a certificate showing that no litigation is pending affecting the issuance and sale of the Bonds, an arbitrage certificate covering its expectations concerning the use of proceeds from the sale of the Tax-Exempt Bonds and related matters and a certificate regarding the accuracy of the hereinafter described final official statement for the Bonds in connection with their initial issuance.

**CUSIP<sup>(a)</sup> IDENTIFICATION NUMBERS:** It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bond nor any error with respect thereto shall constitute cause for failure or refusal by the purchaser thereof to accept delivery of and to pay for the Bonds in accordance with the terms of its proposal. No CUSIP identification number shall be deemed to be a part of any Bond or a part of the contract evidenced thereby, and no liability shall hereafter attach to the City or to any of its officers or agents because of or on account of such numbers or any use made thereof. All

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<sup>(a)</sup> Copyright 2007, American Bankers Association. CUSIP data is provided by Standard & Poor's, CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP numbers are provided for information only. The City takes no responsibility for the accuracy of such numbers.

expenses in relation to the printing of CUSIP identification numbers on the Bonds and the CUSIP Service Bureau charge for the assignment of said numbers shall be paid for by the City.

**PRELIMINARY OFFICIAL STATEMENT DEEMED FINAL; DELIVERY OF OFFICIAL STATEMENTS:** The City deems the Preliminary Official Statement to be “final” as of its date, except for the omission of the offering prices or yields, the interest rates and any other terms or provisions required by the City to be specified in the proposal and other terms of the Bonds depending on such matters. The purchaser of the Bonds agrees to supply the City, within twenty-four hours after the award of the Bonds, all necessary pricing information and any underwriter identification necessary to complete the final Official Statement to be issued in connection with the sale of the Bonds.

Promptly after receiving the necessary information from the purchaser of the Bonds, the City will prepare a final official statement (the “Final Official Statement”) in substantially the same form as the Preliminary Official Statement, subject to any amendments which the City believes should be made in the Final Official Statement.

The City will provide the purchaser of the Bonds with the Final Official Statement within seven (7) business days of the award of the Bonds. The Final Official Statement may be obtained, without cost to the purchaser of the Bonds, in an amount not greater than seventy-five (75) copies from the City. Additional copies of the Final Official Statement may be obtained from the City at the expense of the purchaser of the Bonds.

**CONTINUING DISCLOSURE UNDERTAKING:** The City will covenant for the benefit of certain beneficial owners of the Bonds to provide certain financial information and operating data relating to the City by not later than February 1 in each year commencing February 1, 2010 (the “Annual Reports”), and to provide notices of the occurrence of certain enumerated events, if material (the “Notices of Material Events”). The Annual Reports and the Notices of Material Events will be filed by the City with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access System. These covenants have been made in order to assist the underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). A failure by the City to comply with these covenants must be reported in accordance with such Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market.

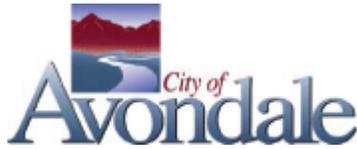
**FURTHER INFORMATION:** Further information, including the Bond Resolution and the Preliminary Official Statement containing information relating to the sale and issuance of and security for the Bonds, may be obtained from Mr. Kevin Artz, Finance & Budget Director of the City, at 11485 West Civic Center Circle, Avondale, Arizona 85323 (telephone number [623] 478-3200), or from Mr. B. Mark Reader, Director, Stone & Youngberg, LLC, Suite 280, 2555 East Camelback Road, Phoenix, Arizona 85016 (Telephone Number [602] 794-4011), Financial Advisor to the City.

DATED: June 1, 2009

/s/ Carmen Martinez

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Carmen Martinez, Clerk, City of Avondale, Arizona



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1373-609 - Municipal Code Amendment relating to the creation and governance of all appointive boards, commissions and committees

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Carmen Martinez, City Clerk (623) 333-1214

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting adoption of an ordinance to amend the Avondale City Code Chapters 12 and 17 and creating a new Chapter 27 relating to the creation and governance of all appointive boards, commissions and committees.

**DISCUSSION:**

Chapter 12, Article II and Chapter 17, Article IV of the Avondale Municipal create and establish rules for the Library Advisory Board and the Parks and Recreation Advisory Board respectively. In addition to the rules included therein, each of the boards has their own bylaws.

When the Library Board determined that they needed to amend their bylaws to reflect their current structure and purpose, staff realized that the Board was precluded from doing so due to the provisions in Chapter 12. Staff also concluded that while there are provisions for the creation of these two boards, no provisions exist in the Code for the many other boards, commissions and committees.

The proposed code amendment seeks to rectify this discrepancy by eliminating the provisions in Articles 12 and 17 related to the Library Advisory Board and the Parks and Recreation Advisory Board and creating a new Chapter 27 whereby all the boards, commissions and committees are listed and authority for their governance is established.

**RECOMMENDATION:**

Staff is recommending adoption of an ordinance to amend the Avondale City Code Chapters 12 and 17 and creating a new Chapter 27 relating to the creation and governance of all appointive boards, commissions and committees.

**ATTACHMENTS:**

Click to download

[Ordinance 1373-609](#)

**ORDINANCE NO. 1373-609**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 12, LIBRARIES, RELATING TO THE LIBRARY ADVISORY BOARD, CHAPTER 17, PARKS AND RECREATION, RELATING TO THE PARKS AND RECREATION ADVISORY BOARD AND CREATING A NEW CHAPTER 27, BOARDS, COMMISSIONS AND COMMITTEES, RELATING TO THE CREATION AND GOVERNANCE OF ALL APPOINTIVE BOARDS COMMISSIONS AND COMMITTEES.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. That the Avondale City Code, Chapter 12, Libraries, is hereby amended by deleting therefrom Article II, Library Advisory Board, in its entirety.

SECTION 2. That the Avondale City Code, Chapter 17, Parks and Recreation, is hereby amended by deleting therefrom Article IV, Parks and Recreation Advisory Board, in its entirety.

SECTION 3. That the Avondale City Code is hereby amended by creating a new, Chapter 27, Boards, Commissions and Committees, to read as follows:

**CHAPTER 27       BOARDS, COMMISSIONS AND COMMITTEES**

**27-1   Created.**

There are hereby created the following boards, commissions and committees of the City of Avondale:

1.     Building Code Board of Appeals
2.     Centennial Committee
3.     Capital Improvement Plan Citizens Committee
4.     Environmental Affairs Commission
5.     International Property Maintenance Code Board of Appeals
6.     Municipal Arts Committee

7. Municipal Development Corporation
8. Neighborhood and Family Services Commission
9. Library Advisory Board
10. Parks and Recreation Advisory Board
11. Personnel Board of Appeals
12. Public Safety Boards
  - a. Citizen Corps Council
  - b. Corrections Officer Retirement Pension Board
  - c. Fire Code Board of Appeals
  - d. Fire Personnel Retirement Pension Board
  - e. Police Personnel Retirement Board
  - f. Volunteer Fire Department Pension Board
13. Risk Management Trust Fund Board
14. Social Services Advisory Board
15. Youth Advisory Commission

**27-2 Conformance with Council Rules.**

To the furthest extent possible, all Avondale boards, commissions and committees, whether provided for herein or otherwise provided for by the Avondale City Code, shall conform to such Rules and Procedures as may be adopted by the Avondale City Council.

**27-3 Governance.**

Upon creation, all Avondale boards, commissions and committees shall be governed by such ordinances, resolutions, by-laws, rules, regulations and procedures as the City Council may adopt.

SECTION 4. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

SECTION 5. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion thereof shall be deemed separate, distinct, and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2009.

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Marie Lopez Rogers, Mayor

ATTEST:

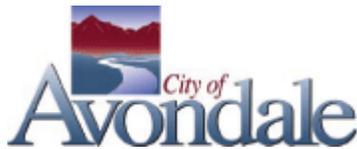
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Carmen Martinez, City Clerk

APPROVED:

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Andrew J. McGuire, City Attorney



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 2830-609 - Amending Library Board Bylaws

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Christopher Reams, Parks, Recreation & Libraries (623)333-2412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a resolution approving changes to the by-laws for the Library Advisory Board.

**BACKGROUND:**

The City of Avondale Library Advisory Board (LAB) was established by Council in October 2002. The original LAB had been inactive since 1999. The Library Advisory Board was established to promote the interests of the public library. The proposed changes to the by-laws are consistent with the goals of the LAB.

**DISCUSSION:**

On March 18, 2009 the LAB members reviewed the by-laws and have identified the following recommended revisions.

Article II: Purpose \*Delete line 2. Be responsible for fundraising drives to enhance the usage of the Avondale Public Library.

Reason for Change: Fundraising activities will be conducted by the Avondale Friends of the Library (501C3). The Avondale LAB will no longer be primarily responsible for raising, allocating, or distributing funds.

Article III. Membership. Amend section 1. Regular Members to read: Regular members of the Advisory Board are those who have been duly appointed by the City Council of the City of Avondale. Members must be residents of the City of Avondale.

Reason for Change: Prior to the construction of the Sam Garcia Library, the Old Town Avondale Library was located on the border of Goodyear and Avondale. The library served both Avondale and Goodyear residents and Goodyear did not have a library. Goodyear now has a library and will develop a Library Advisory board for their citizens. In addition, the Sam Garcia Library is not located on the border of Goodyear and Avondale and will service Avondale residents primarily.

Amend section 5. Removal - sub-point one to read: Failure to attend three regular Library Advisory Board meetings in one year.

Reason for Change: Part of this proposal is to change the regular meetings of the LAB from monthly to quarterly. Three regular meetings missed in one year will constitute over 50% of the meetings and should be grounds for removal from the board.

Add section 5. Removal - new sub-point to read: Failure to meet the residency requirement. Members that move out of the City of Avondale prior to the end of their term may continue on the Board until the current term is complete.

Reason for Change: Board members that move out of Avondale during their term should be allowed to complete the term, but will not be eligible for re-election.

Article VII: Meetings Amend Section 1. Regular Meetings to read: Regular meetings of the Board shall be held at least once a quarter on the third Wednesday, of the following months: January, April, July, and October. The meetings will begin at 6:00 pm at an Avondale Public Library. The Board may determine to hold additional meetings and study sessions. All meetings will be governed by these by-laws and posted in a manner consistent with statute and board resolution.

Reason for Change: The specific months for the meetings is clarified as stated. The meeting times also changed from 6:30 pm to 6:00 pm. The board felt that the 6:00 p.m. start time accommodated scheduling and the required length of the meetings. The location also changed to any Avondale Public Library because meetings are held alternately at both Sam Garcia and the Civic Center Libraries.

Amend Section 2. Special Meetings to read: The Chairman may call a special meeting of the Board at any time with advance prior notice to all members.

Reason for Change: Point of order to properly conduct and set meeting times and dates.

Article X: Disbursement of Finances

\*Delete Article X: Disbursement of Finances

Reason for Change: Fundraising activities will be conducted by the Avondale Friends of the Library (501C3). The Avondale LAB will no longer be primarily responsible for raising, allocating, or distributing funds.

**BUDGETARY IMPACT:**

There is no budget impact associated with this request.

**RECOMMENDATION:**

Staff recommends that the City Council adopt a resolution approving changes to the by-laws for the Library Advisory Board.

**ATTACHMENTS:**

Click to download

 [Library Board Bylaws \(redline\)](#)

 [Resolution 2830-609](#)

# City of Avondale-Library Advisory Board Bylaws

## AVONDALE PUBLIC LIBRARY ADVISORY BOARD BY-LAWS

### ARTICLE I: NAME

The name of this organization shall be the Library Advisory Board of the Avondale Public Library.

### ARTICLE II: PURPOSE

The purpose of the Advisory Board shall:

1. Promote the interests and foster closer relations between the Avondale Public Library and the community;
- ~~2. Be responsible for fundraising drives to enhance the usage of the Avondale Public Library;~~
3. Enable the Avondale Public Library to enhance services, expand programs and add new dimensions that maximize the Library's role and usefulness to the community.

### ARTICLE III: MEMBERSHIP

#### Section 1. Regular Members

Regular members of the Advisory Board are those who have been duly appointed by the City Council of the City of Avondale. ~~Members must be residents of the City of Avondale.~~

#### Section 2. Ethics

Members shall observe the 'Statement of Ethics' adopted as part of these Bylaws and included as Appendix A.

#### Section 3. Terms and Reappointments

Length of term and number of terms shall be determined by the City Council of the City of Avondale. Terms shall consist of three (3) years from date of appointment.

#### Section 4. Vacancies

Vacancies shall be filled pursuant to the Library Law and the policies of the City Council of the City of Avondale. When a vacancy occurs due to removal, have the position filled through an alternate list of candidates or appointed by the City Council by a search for a new candidate.

#### Section 5. Removal

A board member may be removed only by majority vote of the Library Advisory Board and only upon a showing of good cause. Good cause shall include but not be limited to:

- Failure to attend, ~~without justification~~, three ~~consecutive~~ regular ~~monthly meetings of the Board Library Advisory Board meetings in one year.~~
- Violations of the Board's statement of ethics.
- ~~Failure to meet residency requirement. Members that move out of the City of Avondale prior to the end of their term may continue on the Board until the current term is complete.~~

### ARTICLE IV: OFFICERS

#### Section 1.

# **City of Avondale-Library Advisory Board Bylaws**

The officers of this Board shall be Chairman and Vice-Chairman.

## **ARTICLE V: ELECTION OF OFFICERS**

### **Section 1. Date of Election**

The officers shall be elected annually at the first regularly scheduled board meeting following December 1.

### **Section 2. Term of Office**

The officers shall assume their duties upon election and shall serve for a term of one year or until their successors are elected.

### **Section 3. Number of Terms of Office**

A board member shall not be eligible to serve more than two consecutive terms in the same executive office, except by affirmative vote of a two-thirds majority of Library Board members present at the meeting at which the election is held.

### **Section 4. Vacancies**

A vacancy occurring in any office shall be filled for the unexpired term by a person elected at a regular meeting, notice of such election having been given 5 days in advance of the meeting by the highest ranking officer.

### **Section 5. Removal of Officer**

Any officer may be removed from office for failure to discharge his duties by an affirmative vote of five members at a regular meeting. The members seeking such action will give written notice of such issue 5 days before any action taken.

## **ARTICLE VI: DUTIES OF THE OFFICERS**

### **Section 1. Chairman**

The Chairman shall preside at meetings of the Advisory Board; shall perform such other duties as may be prescribed in these Bylaws or assigned by the Advisory Board; shall appoint committees and co-ordinate the work of the officers and committees; and shall be a representative of this Board to other governmental units on such matters as have been approved and designated by the Board.

### **Section 2. Vice-Chairman**

The Vice-Chairman shall act as aid to the Chairman and shall perform the duties of the Chairman in the absence or inability of that officer to serve.

### **Section 3. General Duties**

All officers shall perform the duties prescribed in the parliamentary authority in addition to those outlined in the Bylaws.

## **ARTICLE VII: MEETINGS**

### **Section 1. Regular Meetings**

Regular meetings of the Board shall be held at least once ~~a month~~ **quarter** on the third Wednesday ~~of the following months: January, April, July, and October. The meetings will begin at 6:30 6:00 p.m. at the Library's Main building or at a date, time and place within the City of Avondale selected at least two weeks in advance by the Board and posted in a manner consistent with~~ an Avondale Public Library. The Board may determine to hold additional meetings and study sessions. All meetings will be governed by these by-laws and posted in a manner consistent with statute and board resolution. All members of the Board shall be notified of the regular meetings at least two weeks

# **City of Avondale-Library Advisory Board Bylaws**

prior to the meeting time. The Board may determine to hold additional meetings and study sessions. These meetings will be governed by these bylaws.

## **Section 2. Special Meetings**

The Chairman may call a special meeting of the Board at any time with ~~24 hours prior~~ advance notice to all members.

## **Section 3. Quorum, Regular Meeting**

A majority of the Library Advisory Board shall constitute a quorum, and the affirmative vote of the majority of the board members present shall be required to take action.

## **Section 5. Votes on Motions**

Votes on motions shall be recorded in the minutes as approved or disapproved by voice vote or by roll call when requested by a Board member.

## **Section 6. Public Participation**

There will be an agenda item at each Board meeting for citizens to address the Board. The Chairman, upon request and with the consent of the Board, may act to interpret this rule for the most effective conduct of the meeting.

## **ARTICLE VIII: STANDING AND SPECIAL COMMITTEES**

### **Section 1. Standing Committees**

The Board shall create such standing committees at the beginning of each year as deemed necessary to carry on the work of the Board. The term shall be for the remainder of the calendar year or until terminated by the vote of the board at a regular meeting.

### **Section 2. Special Committees**

The Board may create such special committees for a specific purpose; automatically dissolving when its work is done and its final report is accepted.

## **ARTICLE IX: PARLIAMENTARY AUTHORITY**

Robert's Rules of Order Revised, latest edition, shall govern this Board in all cases where not in conflict with these Bylaws.

## **~~ARTICLE X: DISBURSEMENT OF FINANCES~~**

### **~~Section 1. Disbursements~~**

~~Disbursements of funds credited by Board fundraising for library use shall be made only if approved by the Board. The Chairman must authorize all fund disbursements approved by the Board.~~

## **ARTICLE XI: AMENDMENTS**

### **Section 1. Amendment by Vote**

The Bylaws may be amended by the affirmative vote of a two-thirds majority of the Board members present. Amendments to these Bylaws shall be submitted to the membership at least 14 days prior to their proposed adoption.

### **Section 2. Automatic Amendment**

These Bylaws shall conform to the prevailing governing statutes. Such amendments as may be necessary to affect such conformation shall be automatic.

# **City of Avondale-Library Advisory Board Bylaws**

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## **Appendix A - Statement of Ethics**

Board Members must promote a high level of library service while observing ethical standards.

Board Members must avoid situations in which personal interests might be served or financial benefits gained at the expense of library users, colleagues, or the institution.

It is incumbent upon any trustee to disqualify himself or herself immediately whenever the appearance of a conflict of interest exists.

Board Members must distinguish clearly in their actions and statements between their personal philosophies and attitudes and those of the institution, acknowledging the formal position of the board even if they personally disagree.

A Board Member must respect the confidential nature of library business while being aware of and in compliance with applicable laws governing freedom of information.

Board Members must be prepared to support to the fullest the efforts of librarians in responding to issues of censorship of library materials by groups or individuals.

A Board Member may not represent the Board in any official capacity except as provided for in the Bylaws or as such authority is granted and approved by the Board at a regular or special meeting of the Board.

A Board Member shall not receive a salary or other compensation for services as a trustee except for travel and other expense reimbursements. Board members may participate in library activities available to all Library staff.

**RESOLUTION NO. 2830-609**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING AND RESTATING THE CITY'S LIBRARY ADVISORY BOARD BYLAWS AND ADOPTING RULES AND PROCEDURES THEREFORE.

**BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the City of Avondale Library Advisory Board Bylaws as established by City Council action on November 2, 1987, and as subsequently amended by the City Council are hereby deleted in their entirety.

SECTION 2. That the City of Avondale Library Advisory Board Bylaws are hereby adopted in the amended form attached hereto as Exhibit A, and incorporated herein by reference.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2009.

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2830-609

[Bylaws]

See following pages.

**BYLAWS  
OF  
THE LIBRARY ADVISORY BOARD  
OF  
THE CITY OF AVONDALE  
(Amended and Restated 6-1-09)**

**I. Name**

The name of this organization shall be the Library Advisory Board (hereinafter, the “Board”) of the Avondale Public Library.

**II. Purpose**

The purpose of the Board shall be to:

1. Promote the interests and foster closer relations between the Avondale Public Library and the community;
2. Enable the Avondale Public Library to enhance services, expand programs and add new dimensions that maximize the Library’s role and usefulness to the community.

**III. Membership**

- A. The Board shall be composed of seven (7) members and one (1) alternate who shall be duly appointed by the City Council of the City of Avondale. Members must be residents of the City of Avondale at the time of appointment to the Board by the Council.
- B. Members shall observe the Statement of Ethics, attached hereto as Appendix A and incorporated herein by reference.
- C. Members shall serve terms of three (3) years from the date of appointment. A board member may not serve more than two consecutive terms on the Board.
- D. If a vacancy occurs on the Board, the City Council shall appoint a replacement member to complete the unexpired term. The unexpired term does not count against total appointment time. Upon completion of the unexpired term, the Council Subcommittee on Board, Committee and Commission Appointments will interview the replacement member if such member seeks regular appointment to the Board. The term of any members shall extend until a successor is qualified.
- E. A board member may be removed by the Board upon a majority vote of the Board and upon a showing of good cause, including, but not limited to:

1. Failure to attend three (3) regular meetings of the Board within the preceding 12 month period.
  2. Violations of the Board's statement of ethics.
  3. Failure to meet the residency requirement described in Section III(A), above. Members that move out of the City of Avondale prior to the end of their term may continue on the Board until the then-current term is complete.
- F. A Board member may be removed as a member to the Board upon a vote of not less than five City Council members for any reasonable cause as determined by the City Council.

#### **IV. Election of Officers**

- A. The Board shall elect annually a Chairman and Vice Chairman (the “Officers”) from among the appointed members at the first regular meeting held after December 1 but not later than the third Wednesday of January in the following calendar year. Nominations for the Officers shall be made at the Board’s regular meeting held in October or at another meeting thereafter, if necessary, to ensure that nominations occur prior to December 1. The Officers may be nominated by themselves or by another member. The Officers shall assume their official duties upon election and shall serve for a term of one year. If at the end of an Officer’s one-year term no successor has been qualified, that Officer’s term shall extend until a successor is qualified. Any member serving as an Officer shall be eligible for re-election; provided, however, that each Board member may serve not more than two consecutive terms per office, except by affirmative vote of a two-thirds majority of Board members present at the meeting at which the election is held. The Vice Chairman shall act as Chairman in the Chairman’s absence. In the absence of the Chairman and the Vice Chairman, any Board member shall call the meeting to order and a simple majority of the Board members then present shall select an acting Chairman for the meeting. If the Board members present are unable to select an Acting Chair, the City Staff Liaison shall act as the Chair for the meeting but without voting privileges.
- B. A vacancy occurring in any office shall be filled for the remainder of any unexpired term for that office by a Board member elected by majority vote of the Board at the next meeting where the full Board is present. Notice of such election shall be given by the Board not less than 5 days in advance of the meeting.
- C. Any Officer may be removed from office at any time by a three-fourths majority vote of the full Committee.

- E. Any Officer may be removed from office for failure to discharge his duties by a majority vote of the Board at a regular meeting. The members seeking such action shall give written notice of such removal vote not less than 5 days before any such removal vote may be taken.

**V. Duties of Officers**

- A. The Chairman shall preside at all meetings and hearings of the Board, decide all points of order and procedure, make appointments to any subcommittees of the Board, coordinate the work of the officers and any subcommittees, represent the Board to other governmental units as to such matters as have been approved and designated by the Board and perform any duties as required by law, ordinance or these Bylaws. The Chairman shall have the right to vote on all matters before the Board and shall also have the right to make or second motions in the absence of a motion, or a second made by a member.
- B. The Vice-Chairman shall act as aid to the Chairman and shall perform the duties of the Chairman in the absence or inability of the Chairman to serve.
- C. All officers shall perform the duties prescribed in the parliamentary authority in addition to those outlined in the Bylaws.

**VI. Meetings**

- A. Regular meetings of the Board shall be held at an Avondale Public Library, at least once a quarter on the third Wednesday, of the following months: January, April, July, and October, and shall begin at 6:00 p.m., unless posted differently at least 24 hours in advance. Regular meetings of the Board shall be open to the public and the minutes of its proceedings shall be kept and filed with the City Clerk's Office as public records. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the Chairman and stating his or her name and address and the names of any person on whose behalf he or she is appearing.
- B. Additional meetings may be held on the call of the Chairman upon notice given and posted according to applicable law, at least 24 hours before the meeting.
- C. Notice of time and place of any Board meeting to be held shall be given and posted according to applicable law, at least 24 hours before the meeting.
- D. Unless specified otherwise herein, the Chairman shall conduct all meetings pursuant to the meeting procedures adopted by the City Council.
- E. The Committee is subject to Arizona Open Meeting Law.

- F. A majority of the Board shall constitute a quorum, and the affirmative vote of the majority of such a quorum shall be required to take action, unless otherwise authorized herein.
- G. Votes on motions shall be recorded in the minutes as approved or disapproved by voice vote or, upon request by a Board member, by roll call vote.

**VII. Standing and Special Committees**

- A. The Board shall create such standing committees at the beginning of each year as deemed necessary to carry on the work of the Board. Any standing committees so created by the Board shall stand for the remainder of the calendar year, unless earlier terminated by the vote of the Board at a regular meeting.
- B. The Board may create such special committees as it desires to carry on the work of the Board. Any special committees so created by the Board shall automatically dissolve upon completion of its work and a final report of completed work accepted.

**VIII. Rules and Procedures**

To the furthest extent possible, the Board shall conform to such Rules and Procedures as may be adopted by the Avondale city council.

**IX. Amendments**

The Bylaws may be amended by the affirmative vote of a two-thirds majority of the Board members present. Amendments to these Bylaws shall be submitted to the membership at least 14 calendar days prior to their proposed adoption.

APPENDIX A  
TO  
BYLAWS  
OF  
THE PUBLIC LIBRARY ADVISORY BOARD  
OF  
THE CITY OF AVONDALE

[Statement of Ethics]

See following page.

## STATEMENT OF ETHICS

Board Members must promote a high level of library service while observing ethical standards.

Board Members must avoid situations in which personal interests might be served or financial benefits gained at the expense of library users, colleagues, or the institution.

It is incumbent upon any Board Member to immediately disqualify himself or herself whenever an actual conflict of interest exists or the appearance of a conflict of interest exists.

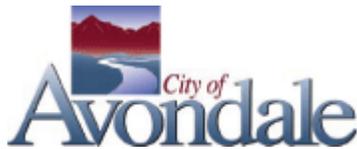
Board Members must distinguish clearly in their actions and statements between their personal philosophies and attitudes and those of the institution, acknowledging the formal position of the board even if they personally disagree.

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Board Members must be prepared to support to the fullest the efforts of librarians in responding to issues of censorship of library materials by groups or individuals.

A Board Member may not represent the Board in any official capacity except as provided for in the Bylaws or as such authority is granted and approved by the Board at a regular or special meeting of the Board.

A Board Member shall not receive a salary or other compensation for services as a Board Member except for travel and other expense reimbursements. Board members may participate in library activities available to all Library staff.



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1375-609 - Granting Shared Well Site Use and Access Easements to SRP in the Del Rio Booster Pump Facility

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Wayne Janis, Water Resources Director (623)333-4444

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt an ordinance granting easements to Salt River Valley Water Users Association (SRP) for the purpose of construction, operation and maintenance of and access to the SRP shared well site 28 situated within the Del Rio Ranch Water Booster facility located on the north side of Whyman Avenue west of 117th Avenue.

**BACKGROUND:**

On April 21, 2008 City Council approved an agreement with SRP for the purpose of relocating a well within the Del Rio Booster Pump and Water Storage Facility. Under terms of the agreement SRP would design, drill, construct and operate a replacement well there to meet municipal drinking water standards. This shared Well 28 would also provide backup supply for SRP irrigation. Well drilling has been completed. The agreement with SRP includes provisions for the city to grant easements for access, utilities and construction of the well along with title to the new well site.

**DISCUSSION:**

SRP has requested an exclusive well site easement be granted in lieu of title to the well site property. This Exclusive Irrigation Facilities and Well Site Easement allows construction, operation and maintenance of the Well, appurtenances and irrigation facilities. The easement consists of a 75 foot by 98 foot rectangle situated on the north side of the Del Rio facility site fence 20 feet north of Whyman Avenue right of way 278 feet west of 117th Avenue. The adjoining Ingress Egress Easement will allow SRP full access to the well site from Wyman Avenue. It consists of a horseshoe shaped area beginning at the gated entry and wrapping around the well site.

**BUDGETARY IMPACT:**

There is no impact to the budget from this ordinance.

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance granting easements to SRP for the purpose of construction, operation and maintenance of and access to the SRP shared well 28 site situated within the Del Rio Ranch Water Booster facility located on the north side of Whyman Avenue west of 117th Avenue.

**ATTACHMENTS:**

Click to download

[Ordinance 1375-609](#)

[Exclusive Irrigation Facilities and Wellsite Easement](#)

📄 [SRP Ingress Egress Easement to Well 28](#)

📄 [Vicinity Map](#)

**ORDINANCE NO. 1375-609**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, GRANTING TWO EASEMENTS TO SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That an irrigation facilities and wellsite easement is hereby granted to Salt River Project Agricultural Improvement and Power District (“SRP”) through, over, under and across a  $\pm$  0.169 acre parcel of real property, generally located north of Whyman Avenue, west of 117th Avenue, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. That an ingress and egress easement is hereby granted to SRP through, over, under and across a  $\pm$  0.343 acre parcel of real property, generally located north of Whyman Avenue, west of 117th Avenue, as more particularly described and depicted in Exhibit B, attached hereto and incorporated herein by reference.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2009.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1375-609

[Legal Description and Map of Irrigation Facilities and Wellsite Easement]

See following pages.

# Exhibit A

December 18, 2008

## LEGAL DESCRIPTION FOR SALT RIVER PROJECT WELL SITE 004W0033N EASEMENT

That part of Tract F of Del Rio Ranch Unit 2, recorded in Book 827 of Maps, Page 21, Maricopa County Records, being situated in the Southeast Quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southernmost Southeast Corner of said Tract F;

Thence North 89°47'45" West, along the Southerly line of said Tract F, a distance of 227.92 feet;

Thence North 00°12'15" East, departing said Southerly line, a distance of 20.00 feet;

Thence North 89°47'45" West, a distance of 18.00 feet to the True Point of Beginning;

Thence continuing North 89°47'45" West, a distance of 75.00 feet;

Thence North 00°12'15" East, a distance of 98.01 feet;

Thence South 89°47'45" East, a distance of 75.00 feet;

Thence South 00°12'15" West, a distance of 98.01 feet to the True Point of Beginning.

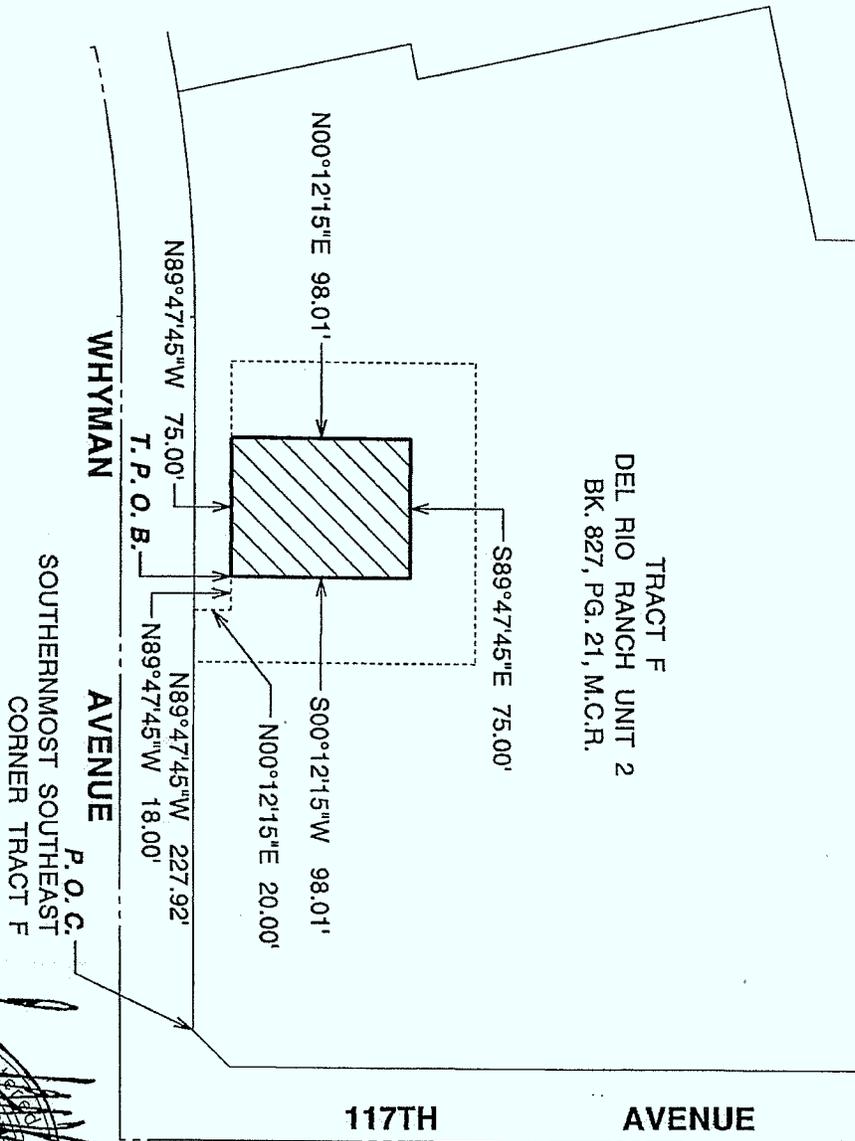
Containing 0.169 Acres, more or less.



Expires: 9/30/2010



SCALE: 1" = 100'



Registered Professional Surveyor  
 No. 36562  
 FRED W. KLEIN III  
 Date Signed: 10/10/03  
 ARIZONA U.S.A.  
 Expires 9-30-2010

<b>EXHIBIT</b> N:1030113\LAND\EHSRPWELL1.DGN	<b>SALT RIVER PROJECT</b> <b>WELL SITE 004W0033N EASEMENT</b>	JOB NO 030113
4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831	<b>COE &amp; VAN LOO</b> PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE	

EXHIBIT B  
TO  
ORDINANCE NO. 1375-609

[Legal Description and Map of Ingress and Egress Easement]

See following pages.

# Exhibit A

December 18, 2008

## LEGAL DESCRIPTION FOR SALT RIVER PROJECT WELL SITE 004W0033N ACCESS AND UTILITY EASEMENT

That part of Tract F of Del Rio Ranch Unit 2, recorded in Book 827 of Maps, Page 21, Maricopa County Records, being situated in the Southeast Quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southernmost Southeast Corner of said Tract F;

Thence North  $89^{\circ}47'45''$  West, along the Southerly line of said Tract F, a distance of 199.92 feet to the True Point of Beginning;

Thence continuing North  $89^{\circ}47'45''$  West, along said Southerly line, a distance of 28.00 feet;

Thence North  $00^{\circ}12'15''$  East, departing said Southerly line, a distance of 20.00 feet;

Thence North  $89^{\circ}47'45''$  West, a distance of 18.00 feet;

Thence North  $00^{\circ}12'15''$  East, a distance of 98.01 feet;

Thence North  $89^{\circ}47'45''$  West, a distance of 75.00 feet;

Thence South  $00^{\circ}12'15''$  West, a distance of 98.01 feet;

Thence North  $89^{\circ}47'45''$  West, a distance of 41.02 feet;

Thence North  $00^{\circ}12'15''$  East, a distance of 134.01 feet;

Thence South  $89^{\circ}47'45''$  East, a distance of 162.02 feet;

Thence South  $00^{\circ}12'15''$  West, a distance of 154.01 feet to the True Point of Beginning.

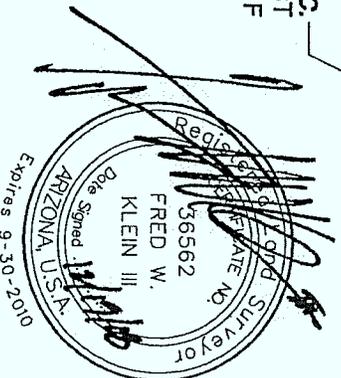
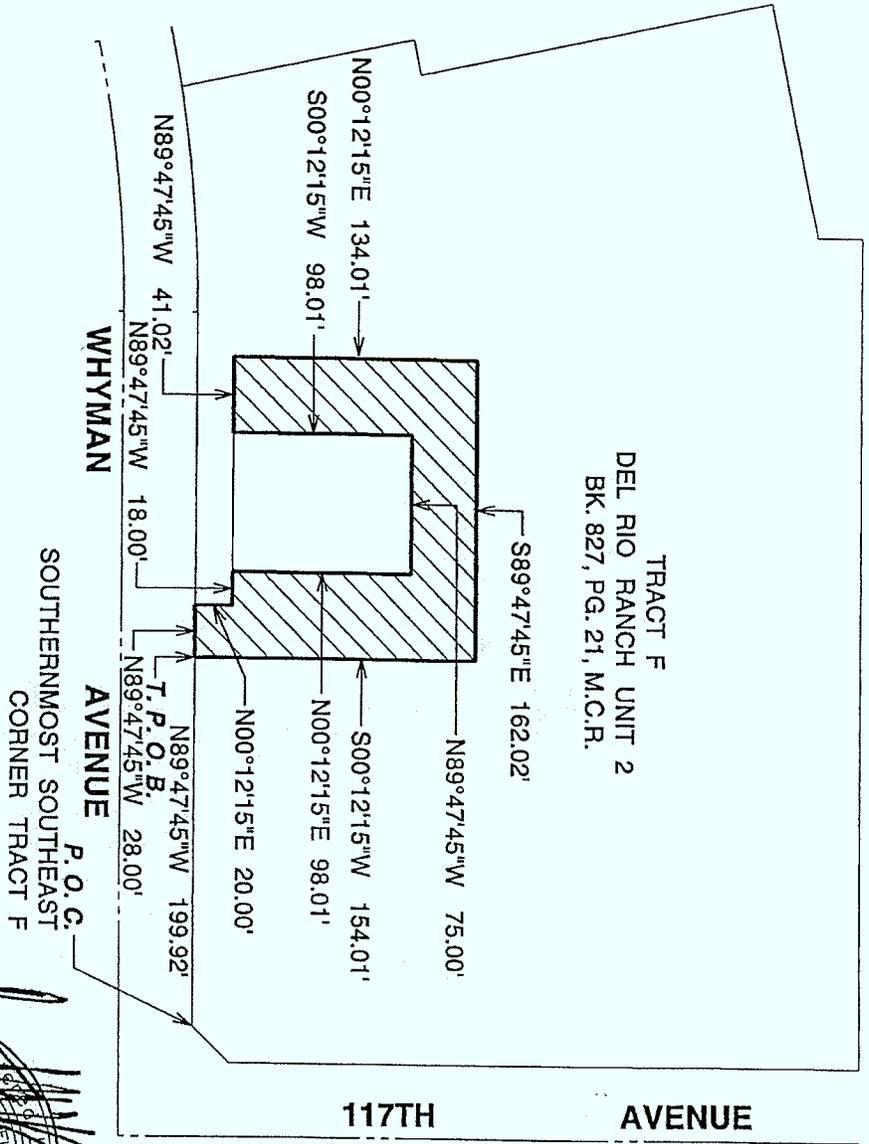
Containing 0.343 Acres, more or less.



Expires: 9/30/2010



SCALE: 1" = 100'



<p><b>EXHIBIT</b></p> <p>N:\030113\LAND\EHSRPWELL2.DGN</p>	<p><b>SALT RIVER PROJECT</b></p> <p><b>WELL SITE 004W0033N ACCESS AND UTILITY EASEMENT</b></p>	<p>JOB NO</p> <p>030113</p>
<p><b>COE &amp; VAN LOO</b></p> <p>PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE</p>		

4550 NORTH 12TH STREET  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 264-6831

**WHEN RECORDED MAIL TO:**

**SALT RIVER PROJECT**

Land Department/PAB350  
P. O. Box 52025  
Phoenix, Arizona 85072-2025

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**EXCLUSIVE IRRIGATION FACILITIES AND WELLSITE EASEMENT**

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Maricopa County  
Parcel #500-32-384  
SE of Sec 13, TS1N, R1W

R/W#      Agt. WGH  
Job # RC1-07010-203  
W ~~MSA~~ C ~~COB~~

**THE CITY OF AVONDALE**, a municipal corporation,

hereinafter called Grantor, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, its agents, employees, contractors and permittees and their respective successors and assigns, hereinafter called the Grantee, an exclusive easement in, upon, over, under, across, through and along the lands hereinafter described (such lands hereinafter described being sometimes referred to herein as the "Easement Property"), to construct, install, reconstruct, replace, remove, repair, operate and maintain one or more wells and/or water or irrigation pumping stations, together with all pipes, canals and other buildings, improvements, appliances, appurtenances and fixtures (collectively "Facilities") for the pumping and/or distribution of water, together with the right of ingress and egress to, from, across and along the Easement Property.

The lands in, upon, over, under, across, through and along which this easement is granted are situated in the County of Maricopa, State of Arizona, and are more particularly described as:

**Grantor's Property:**

Tract F, DEL RIO RANCH UNIT 2, according to Book 827 of Maps, Page 21, records of Maricopa County, Arizona.

**Easement Parcel:**

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

Grantor shall not construct, install or place, or permit to be constructed, installed or placed any building or other structure or improvement, plant any trees or other vegetation, drill any well, store materials of any kind, or alter ground level by cut or fill, within the area of the Easement Property.

Grantee shall have the right (but not the obligation) to trim, cut and clear away trees, brush or other vegetation on the Easement Property whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantee shall have the right (but not the obligation), at its cost, to install, place and maintain on the Easement Property warning or safety signs regarding the Facilities and safety or security devices to protect the Facilities. Any provision contained herein to the contrary notwithstanding, Grantee shall have the right (but not the obligation) at any time, at Grantee's cost, to enclose the Facilities or any portion thereof by fences, walls or other structures and to take other steps to prevent access thereto by unauthorized persons.

In the event Grantee records a document to formally abandon the easement granted herein, all Grantee's rights hereunder shall cease, except the right to remove any and all property placed upon the Easement Property within a reasonable time subsequent to such abandonment.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, personal representatives, legal representatives, successors (including successors in ownership and estate), assigns and lessees of the Grantor and Grantee.

The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor; (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity); and (iii) that the execution, delivery, and performance by Grantor of this document and all others relating to the easement will not constitute a default under any agreement to which Grantor is a party. The individual executing this document shall indemnify, defend and hold harmless Grantee for, from and against any and all losses, costs, expenses, liabilities, claims, demands, and actions of any kind or nature, including court costs and attorneys' fees, arising or accruing as a result of the falsity of any of his or her representations and warranties contained in this document.



# Exhibit A

December 18, 2008

## LEGAL DESCRIPTION FOR SALT RIVER PROJECT WELL SITE 004W0033N EASEMENT

That part of Tract F of Del Rio Ranch Unit 2, recorded in Book 827 of Maps, Page 21, Maricopa County Records, being situated in the Southeast Quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

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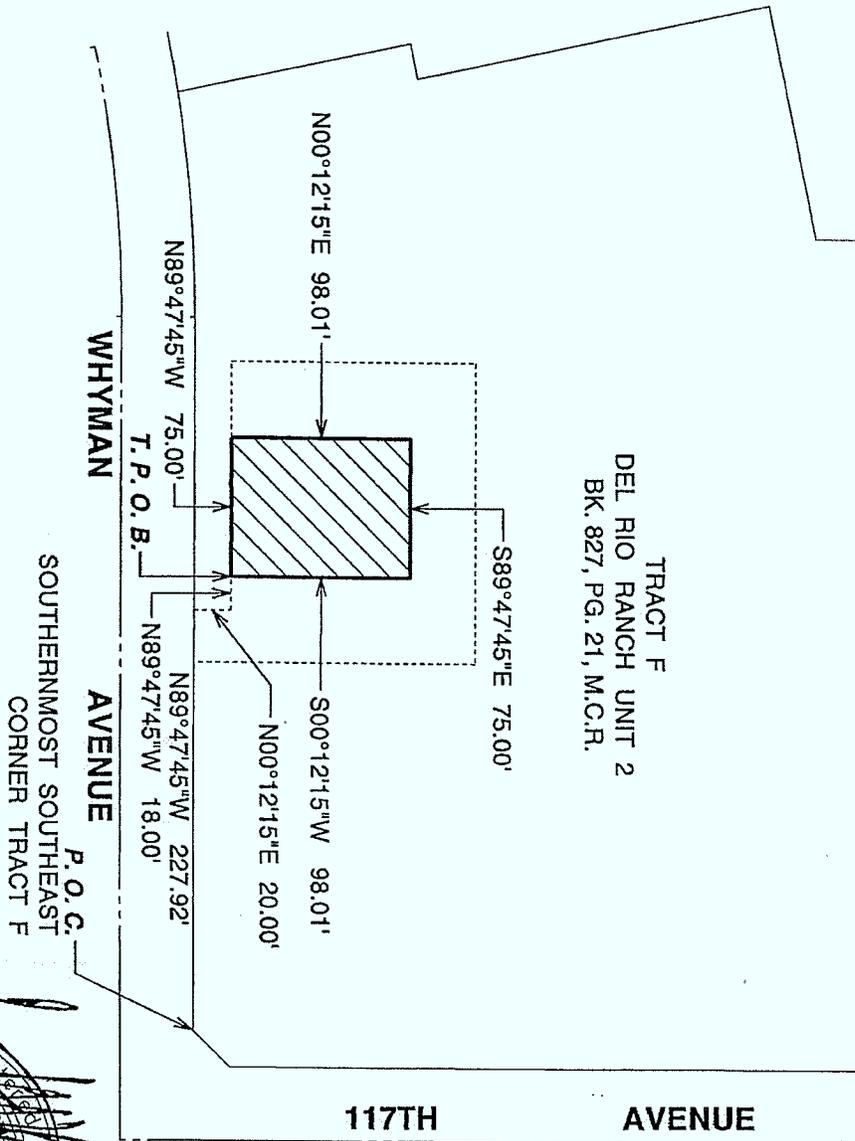
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Expires: 9/30/2010

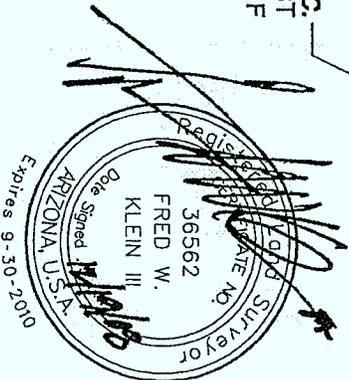


SCALE: 1" = 100'



WHYMAN AVENUE  
 SOUTHERNMOST SOUTHEAST CORNER TRACT F  
 P.O.C.

117TH AVENUE



JOB NO  
 030113

EXHIBIT

N:030113\LAND\EHSRPWELL1.DGN

4550 NORTH 12TH STREET  
 PHOENIX, ARIZONA 85014  
 TELEPHONE (602) 264-6831

SALT RIVER PROJECT  
 WELL SITE 004W0033N EASEMENT

**COE & VAN LOO**  
 PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE

**WHEN RECORDED MAIL TO:**

**SALT RIVER PROJECT**

Land Department/PAB350

P. O. Box 52025

Phoenix, Arizona 85072-2025

---

**INGRESS & EGRESS EASEMENT**

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Maricopa County  
Parcel #500-32-384  
SE of Sec 13, TS1N, R1W

R/W#      Agt. WGH  
Job # RC1-07010-203  
W MSA C CAB

**THE CITY OF AVONDALE**, a municipal corporation,

hereinafter called Grantor, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, its agents, employees, contractors and permittees and its and their respective successors and assigns, hereinafter called the Grantee, the right, easement and privilege of full and free vehicular and pedestrian ingress and egress over, across and upon the following described property:

**Grantor's Property:**

Tract F, DEL RIO RANCH UNIT 2, according to Book 827 of Maps, Page 21, records of Maricopa County, Arizona.

**Easement Parcel:**

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

Grantor shall not construct, install or place, or permit to be constructed, installed or placed upon the property described herein any fence, wall, structure or other improvement which shall interfere with or impede Grantee's right of full and free ingress and egress.

Grantee shall have the right (but not the obligation), at its expense, to pave, grade or otherwise improve the surface of the property described herein or portions thereof to facilitate Grantee's right of ingress and egress thereto.

In the event Grantee records a document to formally abandon use of the easement granted herein, all Grantee's rights hereunder shall cease and shall revert to Grantor.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, personal representatives, legal representatives, successors (including successors in ownership and estate), assigns and lessees of the Grantor and Grantee.

The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor; (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity); and (iii) that the execution, delivery, and performance by Grantor of this document and all others relating to the easement will not constitute a default under any agreement to which Grantor is a party. The individual executing this document shall indemnify, defend and hold harmless Grantee for, from and against any and all losses, costs, expenses, liabilities, claims, demands, and actions of any kind or nature, including court costs and attorneys' fees, arising or accruing as a result of the falsity of any of his or her representations and warranties contained in this document.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK



# Exhibit A

December 18, 2008

## LEGAL DESCRIPTION FOR SALT RIVER PROJECT WELL SITE 004W0033N ACCESS AND UTILITY EASEMENT

That part of Tract F of Del Rio Ranch Unit 2, recorded in Book 827 of Maps, Page 21, Maricopa County Records, being situated in the Southeast Quarter of Section 13, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southernmost Southeast Corner of said Tract F;

Thence North  $89^{\circ}47'45''$  West, along the Southerly line of said Tract F, a distance of 199.92 feet to the True Point of Beginning;

Thence continuing North  $89^{\circ}47'45''$  West, along said Southerly line, a distance of 28.00 feet;

Thence North  $00^{\circ}12'15''$  East, departing said Southerly line, a distance of 20.00 feet;

Thence North  $89^{\circ}47'45''$  West, a distance of 18.00 feet;

Thence North  $00^{\circ}12'15''$  East, a distance of 98.01 feet;

Thence North  $89^{\circ}47'45''$  West, a distance of 75.00 feet;

Thence South  $00^{\circ}12'15''$  West, a distance of 98.01 feet;

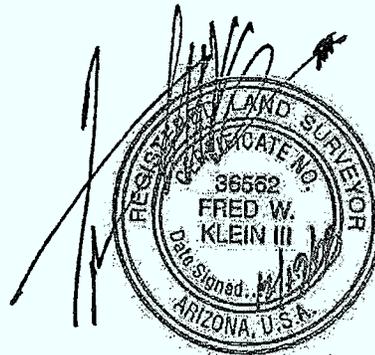
Thence North  $89^{\circ}47'45''$  West, a distance of 41.02 feet;

Thence North  $00^{\circ}12'15''$  East, a distance of 134.01 feet;

Thence South  $89^{\circ}47'45''$  East, a distance of 162.02 feet;

Thence South  $00^{\circ}12'15''$  West, a distance of 154.01 feet to the True Point of Beginning.

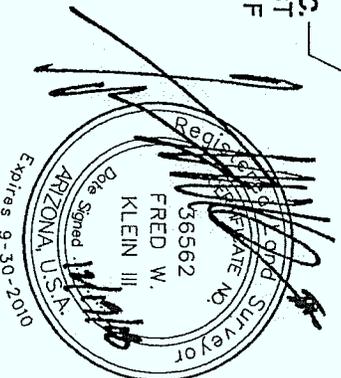
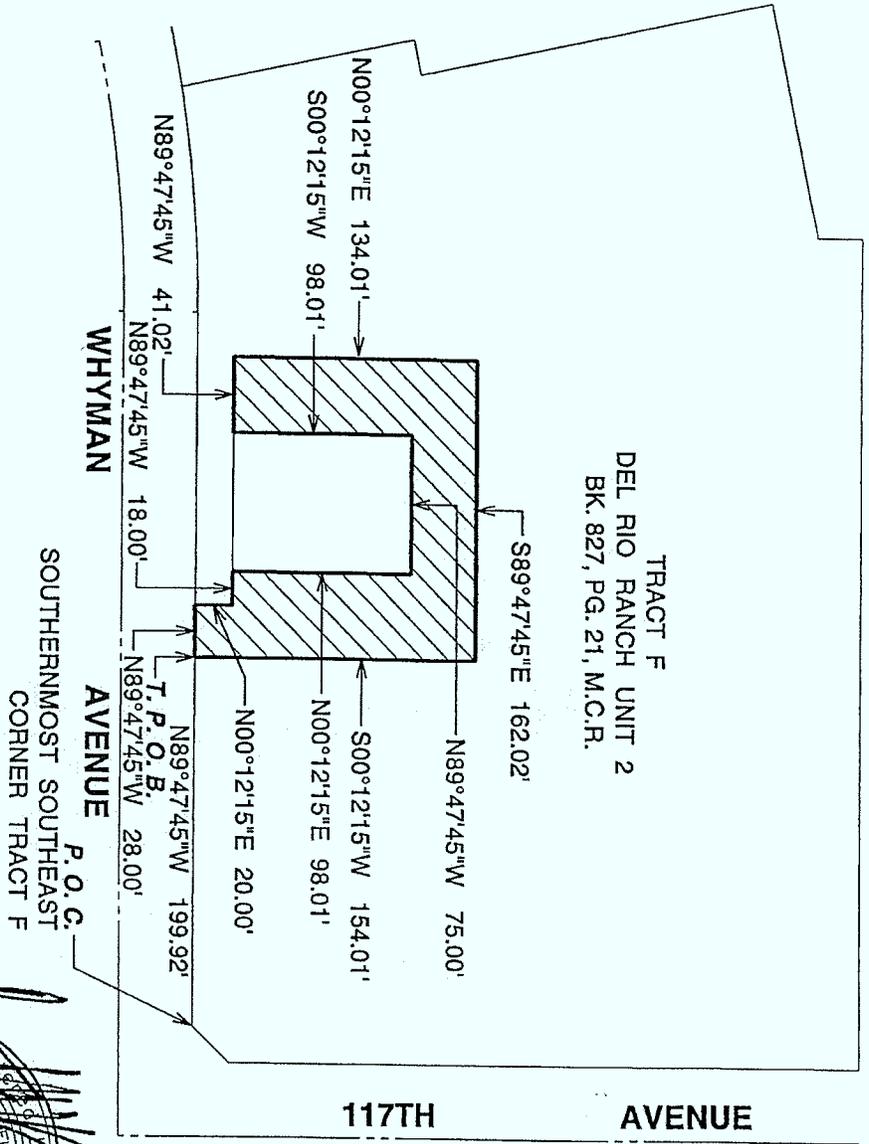
Containing 0.343 Acres, more or less.



Expires: 9/30/2010

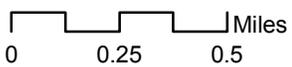
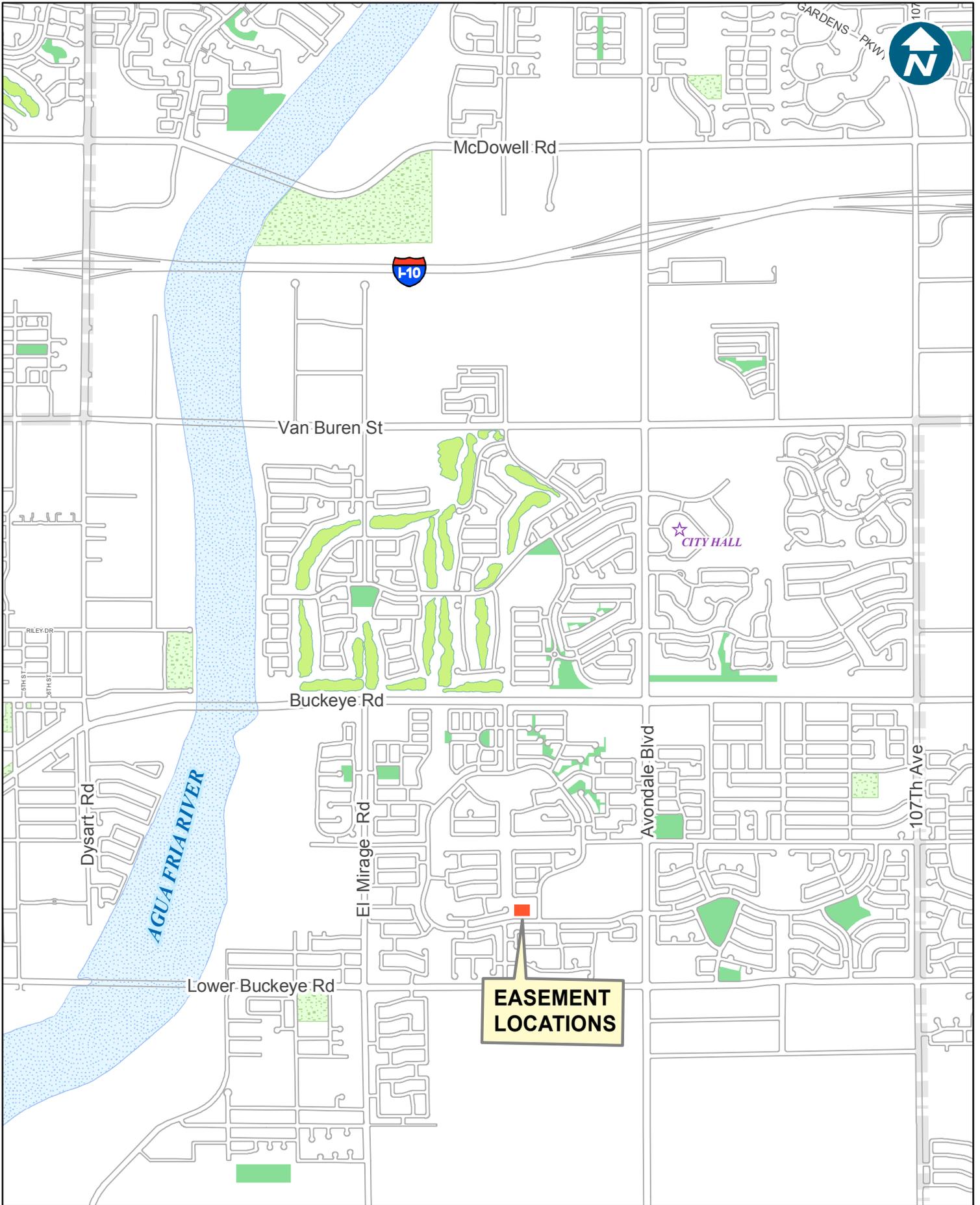


SCALE: 1" = 100'



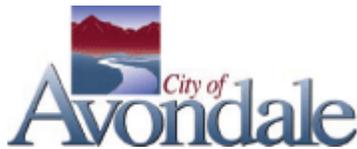
<p><b>EXHIBIT</b></p> <p>N:\030113\LAND\EHSRPWELL2.DGN</p>	<p><b>SALT RIVER PROJECT</b></p> <p><b>WELL SITE 004W0033N ACCESS AND UTILITY EASEMENT</b></p>	<p>JOB NO</p> <p>030113</p>
<p><b>COE &amp; VAN LOO</b></p> <p>PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE</p> <p>4550 NORTH 12TH STREET          PHOENIX, ARIZONA 85014          TELEPHONE (602) 264-6831</p>		

# VICINITY MAP



## SRP Paired Well 28 at Del Rio Booster Pump and Water Storage Facility

WATER RESOURCES - GIS - LS  
Prepared: March 9, 2009



# CITY COUNCIL REPORT

**SUBJECT:**

Public Hearing and Resolution 2829-609 -  
Amendment to the 2008-2009 CDBG Annual Action  
Plan

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Gina Montes, Neighborhood and Family Services Director (623)333-2727

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Approval of City Council is sought for a Resolution amending the 2008-2009 Annual Action Plan to accept an additional \$132,659 in CDBG funds from HUD.

**BACKGROUND:**

The American Recovery and Reinvestment Act of 2009 appropriates an additional \$132,659 in Community Development Block Grant (CDBG-R) funds to Avondale. To be eligible for the CDBG-R funds the City of Avondale must complete an amendment to its 2008-2009 Annual Action Plan (CDBG-R Amendment). As part of the amendment process the City advertised a 7 day public period from May 22, 2009 through May 29, 2009 to receive input on the use of the funds. No comments were received. The City proposes to use the funds to augment its existing and operational single family housing rehabilitation program.

**DISCUSSION:**

The City has completed 58 emergency repair projects and 6 substantial rehabilitation projects since starting the program in May of 2008. The extra funds will allow up to an additional 4 projects to be added to the 16 projects expected to be completed by the end of next fiscal year. The CDBG-R funds will provide the opportunity to increase the energy efficiency standards in the City's Housing Rehabilitation Program. Avondale's rehabilitation standards already include increasing energy efficiency primarily through weatherization and the installation of energy efficient appliances; however the primary purpose of the Rehab Program is the removal of health and safety hazards. With the addition of CDBG-R funds Avondale's Rehab Program will function with a dual purpose of removing health and safety hazards and measurably increasing energy efficiency. This will entail increasing the scope of each project to ensure windows, appliances, insulation meet the highest energy efficiency standard attainable given the condition of the home.

**BUDGETARY IMPACT:**

CDBG funds do not require matching funds and will therefore have no impact on the City's General Fund. Additional appropriation authority will be required to spend the funds.

**RECOMMENDATION:**

Adopt Resolution amending the 2008-09 Annual Action Plan to accept an additional \$132,659 in CDBG funds from HUD.

**ATTACHMENTS:**

[Click to download](#)

📄 [CDBG-R Housing Rehab Proposal](#)

📄 [Resolution 2829-609](#)

**CITY OF AVONDALE**  
**AMENDMENT #2 TO THE 2008-2009 ANNUAL ACTION PLAN**

**CDBG-R – Infrastructure or Energy Efficiency**

7 Day Public Comment Period: May 22 through May 29, 2009

Submission to HUD: June 5, 2009

The City of Avondale received correspondence dated March 6, 2009 from the U.S. Department of Housing and Urban Development (HUD) that \$132,659 in CDBG-R funds have been allocated to Avondale through the American Recovery and Reinvestment Act (ARRI). The City of Avondale is prepared to accept and use CDBG-R funds in accordance with *Notice of program Requirements for CDBG Funding Under the American Recovery and Reinvestment Act of 2009*. The following proposal outlines specifically how Avondale will comply with the regulations while achieving the intent of ARRA to promote job creation, economic opportunity and energy efficiency.

**Proposal Contents**

1. Description of project

Avondale proposes to use CDBG-R funds to augment its existing single-family owner occupied housing rehabilitation program (“Rehab Program”) by increasing the number of rehabilitation projects and elevating energy efficiency practices to a higher standard. Avondale’s existing Rehab Program produces 5 emergency rehabilitation projects each month and 1 substantial rehabilitation project every two months. The extra funds will allow Avondale to extend its existing contract with Foundation for Senior Living from June 30, 2010 to December 31, 2010 and increase the number of substantial rehabilitation projects completed by 4. Of the \$132,659 funds available Avondale will use \$13,266 for administration and add \$119,393 to the existing contract with FSL for rehabilitation. The contract budget, scope and schedule will be amended as follows:

<b>Augmentation of Existing Contract</b>			
<b>Current Contract</b>		<b>Extended Contract with CDBG-R Funds</b>	
Contract Deadline	June 30, 2010	December 31, 2009	
Output	12 Projects	4 Projects	16 Projects
Activity	HOME Funds	CDBG-R Funds	Total
Rehab Services	\$145,138	\$31,818	
Construction	\$308,560	\$83,575	
Relocation	\$12,000	\$2,000	
Soft Costs	\$6,000	\$2,000	
Total	\$471,698	\$119,393	

Avondale's rehabilitation standards already include increasing energy efficiency, however, the primary purpose of the Rehab Program is the removal of health and safety hazards. With the addition of CDBG-R funds energy efficiency standards will be increased to a level of importance equal to health and safety standards, thereby attaining greater results from each rehabilitation project. This will entail increasing the scope of each project to ensure windows, doors, appliances, insulation, HVAC systems and structural systems meet the highest energy efficiency standard attainable given the condition of the home. All CDBG-R funds are expected to be expended by December 31, 2010.

2. Description of how project maximizes jobs

(A) Preserving and creating jobs and promoting economic recovery;

It is estimated that Avondale's Rehab Program requires 3.5 full time jobs to operate. The additional funding will increase the number of jobs to 4.

(B) Assisting those most impacted by the recession;

Avondale's Housing Rehab program already assist low income persons impacted by the lack of economic opportunity and the recession has worsened their circumstance. Increasing funding for Avondale's Housing Rehab program will assist more households affected by the recession.

(C) Providing investment needed to increase economic efficiency;

The economic benefit of housing rehabilitation projects construe to primarily small businesses. Almost all of the contractors and subcontractors who bid on housing rehabilitation projects are small contractors with one to five employees. The collapse of the housing market and the subsequent near ceasing of building activity has left most general contractors without work. Investment in housing rehabilitation provides a viable work alternative for contractors who previously relied on new construction. Investing in housing rehabilitation services allows energy efficient systems to be put in place which will serve as an example for new construction when the housing market recovers. The skills of small contractors can be utilized for rehabilitation work while maintaining their capital structures (vehicles, equipment) intact. The goal is to significantly increase rehabilitation activity during the housing downturn.

(D) Investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits;

The existing older housing stock is the largest source of affordable housing in Avondale. Investing in this affordable housing infrastructure not only creates jobs today but keeps low-income people housed without subsidy over the long term.

(E) Minimizing or avoiding reductions in essential services; or

Housing rehabilitation is an essential service in low income neighborhoods. Most low income families and newly unemployed families are one home repair from financial insolvency. Increasing housing rehabilitation activity will not only stabilize more housing financial situations but avoid the need for additional social services resulting from the collapse of individual household financial circumstances.

(F) Fostering energy independence

Increasing the energy efficiency of individual homes will have the collective impact of contributing to energy independence. Seventy percent of all energy consumed is for home heating and cooling. Weatherizing homes and retrofitting them with highly energy efficient appliances will reduce the energy demand incrementally and contribute to the greater goal of energy independence.

3. Description of number of full time jobs to be created

Increasing the rehabilitation activity by 4 projects will have the affect of creating one full time job over the next year.

4. Description of how activities will promote energy conservation

Energy conservation in the case of housing rehabilitation is result from increased energy efficiently. The installation of energy efficient appliances puts less demand on the energy grid and conservation of energy results.

5. Description of who citizens can contact.

Andrew Rael  
CDBG Manager  
City of Avondale  
1007 S. 3<sup>rd</sup> Avenue  
Avondale, Arizona 85323  
[arael@avonale.org](mailto:arael@avonale.org) 623-333-2715

## **RESOLUTION NO. 2829-609**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A SECOND AMENDMENT TO THE 2008-2009 ANNUAL ACTION PLAN PORTION OF THE 2006-2009 CONSOLIDATED PLAN AND AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR RECEIPT OF CDBG-R FUNDS.

**WHEREAS**, Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005, approved February 17, 2009) appropriated \$132,659 to the City of Avondale (the "City") to carry out the Community Development Block Grant (the "CDBG") program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*) (the "HCDA") on an expedited basis. These funds will be distributed to grantees, including the City, that received CDBG funding in Fiscal Year 2008 in accordance with the provisions of 42 U.S.C 5306. The grant program under Title XII is commonly referred to as the CDBG Recovery (the "CDBG-R") program; and

**WHEREAS**, the City desires to receive CDBG-R funds to carry out programs to provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation of existing buildings; and

**WHEREAS**, the U.S. Department of Housing and Urban Development ("HUD") is prepared to provide \$132,659 in CBDG-R funds to the City to begin using within 120 days from the date of receipt to promote energy efficiency and rehabilitate existing buildings; and

**WHEREAS**, HUD has issued regulations in the Federal Register under Docket No. FR-5309-N-01 (the "Regulations") that define the statutory requirements of CBDG-R and that require an Amendment to the 2008-2009 Annual Action Plan as a condition of receiving CBDG-R funds; and

**WHEREAS**, the City of Avondale 2006-2009 Consolidated Plan (the "Consolidated Plan") was approved by Council of the City of Avondale (the "City Council") on May 1, 2006 and by HUD in June 2006; and

**WHEREAS**, the City of Avondale 2008-2009 Annual Action Plan (the "Action Plan") was approved by the City Council on April 21, 2008, as amended by that certain Resolution No. 2786-1108 dated as of November 17, 2008; and

**WHEREAS**, the City prepared a second amendment to the Action Plan (the “Action Plan Amendment”) in accordance with the Regulations; and

**WHEREAS**, the City has completed public participation requirements in accordance with Regulations, including a seven day comment period (May 22-29, 2009) during which the draft amendment was posted on the City website, published in the West Valley View and available in Spanish at the City’s Community Center through which comments were able to be received from City residents for incorporation into the Action Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. That the recitals set forth above are hereby incorporated as if fully set forth herein.

SECTION 2. That the Action Plan Amendment and the allocation of funding to the activities to be undertaken described below are hereby approved and authorized for submission to HUD.

CBDG-R Allocations	
Activity	Allocation
Single Family Owner Occupied Housing Rehabilitation for Energy Efficiency	\$119,393
Administration	\$13,266
Totals	\$132,659

SECTION 3. That the City Council hereby finds that all expenditures as set forth in the Action Plan Amendment are necessary and appropriate and further that said expenditures for the NSP program will meet the low-moderate and middle income national objective.

SECTION 4. That the Mayor, the City Manager or authorized designee, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2009.

---

Marie Lopez Rogers, Mayor

ATTEST:

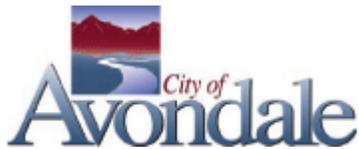
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Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney



# CITY COUNCIL REPORT

**SUBJECT:**

Continuance - Public Hearing and Ordinance -  
Section 12 Landscape Ordinance

**MEETING DATE:**

June 1, 2009

**TO:** Mayor and Council

**FROM:** Brian Berndt, Development Services Director (623)333-4011

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff requests that the Council continue to the meeting of June 15, 2009 the public hearing and consideration of the ordinance to amend Section 7 of the Avondale Zoning Ordinance, repeal existing Section 12 of the Zoning Ordinance, and approve a new Section 12 of the Zoning Ordinance entitled *Landscape, Walls and Fences* as it is under further legal counsel and stakeholder review.

**DISCUSSION:**

This public hearing was originally scheduled and advertised to be held on May 18, 2009. The City Council approved a Staff recommendation to continue it to the June 1, 2009. There have been recent minor changes to the ordinance language. Staff will circulate the ordinance to the stakeholders for final review.

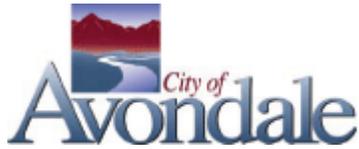
**RECOMMENDATION:**

Staff recommends that the Council continue to the meeting of June 15, 2009 the public hearing and consideration of the ordinance to amend Section 7 of the Avondale Zoning Ordinance, repeal existing Section 12 of the Zoning Ordinance, and approve a new Section 12 of the Zoning Ordinance entitled *Landscape, Walls and Fences* as it is under further legal counsel and stakeholder review.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
EXECUTIVE SESSION

**MEETING DATE:**  
June 1, 2009

**TO:** Mayor and Council  
**FROM:** Carmen Martinez, City Clerk (623) 333-1214  
**THROUGH:** Charlie McClendon, City Manager

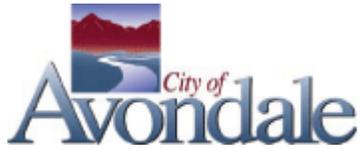
**PURPOSE:**

The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City's Attorney in order to consider its position and instruct the City Attorney regarding the Council's position regarding a potential Intergovernmental Agreement for solid waste.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**  
EXECUTIVE SESSION

**MEETING DATE:**  
June 1, 2009

**TO:** Mayor and Council  
**FROM:** Carmen Martinez, City Clerk (623) 333-1214  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(3) for discussion or consultation with the City's Attorney regarding tax issues.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available